

FEB
S. D.

IN THE
UNITED STATES SUPREME COURT,

No. ~~770~~ 71

OCTOBER TERM, 1895.

INDEX

-TO-

TRANSCRIPT OF RECORD.

VOLUMES 1 TO 6 INCLUSIVE.

**SOUTHERN PACIFIC RAILROAD
COMPANY, et al.,**

Appellants.

vs.

THE UNITED STATES.

*Appeal from the United States Circuit Court of Appeals for
the Ninth Circuit.*

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" Stefano Cuneo.....		2,880	2,181
" Harry Chandler.....		2,938	2,233
" D. A. Chambers.....		3,949	3,101
" William Ferguson.....		688	421
" Joseph William Furnivan		2,888	2,189
" Isaac E. Gates.....		2,594	1,924
" J. A. Graves.....		2,694	2,020
" W. D. Gould.....		2,827	2,136
" Thomas Goss.....		2,841	2,148
" Jonathan Garber.....		2,853	2,158
" Harrison W. Gardner.....		4,001	3,142
" Peter Hamilton.....		679	412
" William Hood.....		922	618
" J. F. Holbrook.....		2,847	2,154
" Calvin Hartwell.....		2,868	2,172
" J. Harps.....		2,910	2,208
" J. F. Holbrook.....		2,918	2,215
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" C. J. Hillyer.....		3,942	3,094
" William A. Hayes.....		3,993	3,137
" E. W. Jensen.....		2,796	2,107
" John Kenealey.....		2,837	2,145
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" E. H. Lamme.....		1,431	1,067
" G. L. Lansing.....		1,232	904
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" William J. McGee.....		3,928	3,081
" Mauchlin Niven.....		3,955	3,105
" Frank D. Orme.....		3,959	3,109
" William H. Pratt.....		1,365	1,007
" McHenry Pierce		2,850	2,156
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" Ramon Parea.....		2,916	2,214
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" E. N. Robinson.....	2,676	1,995
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" John Robarts	2,815	2,125
" D. G. Scofield.....	1,268	936
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" M. W. Stimson.....	2,863	2,167
" Gianbatista Suraco.....	2,884	2,185
" D. M. Sutherland.....	2,932	2,228
" W. R. Spencer.....	3,944	3,096
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Original. Print.

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TO

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IN THE
UNITED STATES SUPREME COURT,
No. 570
OCTOBER TERM, 1895.

TRANSCRIPT OF RECORD.

**SOUTHERN PACIFIC RAILROAD
COMPANY, et al.,**

Appellants.

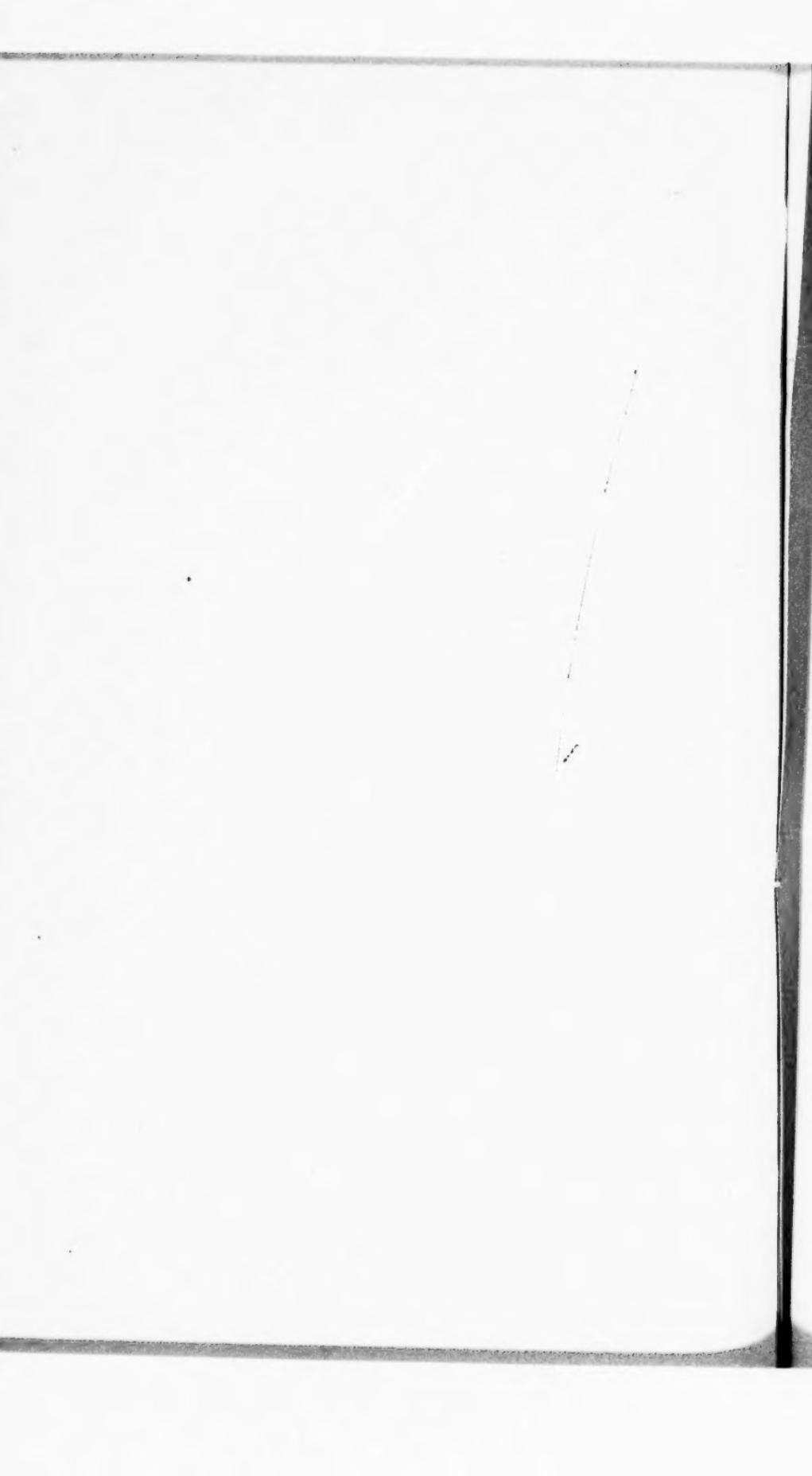
vs.

THE UNITED STATES.

VOLUME I

(Pages 1 to 692.)

*Appeal from the United States Circuit Court of Appeals for
the Ninth Circuit.*



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IN THE

CIRCUIT COURT

OF THE

United States of America,

OF THE

NINTH JUDICIAL CIRCUIT

IN AND FOR THE

SOUTHERN DISTRICT OF CALIFORNIA.

VOLUME I.

THE UNITED STATES OF AMERICA,

Complainant,

v.

THE SOUTHERN PACIFIC RAILROAD
COMPANY, ET AL.,

Defendants.

No. 184.



*In the United States Circuit Court of Appeals, Ninth
Circuit, sitting at San Francisco, Cal.*

SOUTHERN PACIFIC RAILROAD COMPANY, ET AL. }
vs. } Appellants, } No. 193.
UNITED STATES. } Oct. Term, 1894.

It is stipulated in said cause that in printing the record for said Court that the maps showing the location of line of road of the Atlantic and Pacific Railroad Company east of the Colorado River filed by said Company in the Interior Department and now a part of the record in the above-entitled suit may be printed in a reduced size and the affidavits, certificates and endorsements upon said maps may also be printed in a reduced size.

JOSEPH H. CALL,
Of Counsel for United States.

JOSEPH D. REDDING,
Solicitor for Appellants.

[Endorsed]: No. 193. U. S. Circuit Court of Appeals for the Ninth Circuit. Southern Pacific R. R. Co. et al., Appellants, vs. The United States. Stipulation that in printing record, certain maps, etc., be reproduced in reduced size. Filed October 25, 1894. F. D. Monckton, Clerk.

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

UNITED STATES OF AMERICA,
Complainant and Respondent, }
vs.
SOUTHERN PACIFIC RAILROAD COM- }
PANY, ET AL.,
Defendants and Appellants. }
No. 193.

Stipulation

WITH REFERENCE TO THE PRINTING OF THE RECORD
AND THE CUSTODY OF ORIGINAL PAPERS.

In accordance with Rules 23, 26 and 24 of this Court and in accordance with Rule 8 of the Rules of the Supreme Court of the United States and in order to expedite the printing of the record in this case, for use both before this Honorable Court and before the Honorable the Supreme Court of the United States and to simplify the same and

Whereas the record in this cause has been prepared by the Clerk of the Circuit Court for the Ninth Circuit, Southern District of California, and has been forwarded by him to this Court and has been filed in this Court and docketed as Case No. 193, duly numbered and paged—

Now, therefore, it is hereby stipulated by and between the parties to this cause and by and between their respective solicitors and counsel, in writing, that the following pages of said record as the same is now

docketed and on file in this Court need not be printed,
namely :

Pages 15 to 40, inclusive ;
Pages 43 to 63, inclusive ;
Pages 89 to 97, inclusive ;
Pages 101 to 112, inclusive ;
Pages 116 to 117, inclusive ;
Pages 121 to 128, inclusive ;
Pages 148 to 156, inclusive ;
Pages 175 to 201, inclusive ;
Pages 484 to 485, inclusive ;
Page 553 ;
Pages 557 to 583, inclusive ;
Pages 585 to 598, inclusive ;
Pages 606 to 609, inclusive ;
Pages 611 to 617, inclusive ;
Pages 624 to 640, inclusive ;
Page 643 ;
Pages 1455 to 1492, inclusive (the same being found
in pages 254 to 290, inclusive) ;
Pages 1773 to 1786 inclusive (the same being found
in pages 291 to 319, inclusive).

It is furthermore stipulated that this cause may be
heard with the parts of the record omitted as above
specified.

And Whereas, the following Exhibits are on file in
this case, namely :

Defendants' Exhibits before Stephen M. Potter,
Special Examiner, Numbers 59 to 64, inclusive ;

Plaintiff's Exhibits before Stephen M. Potter, Special
Examiner, Numbers F, H, I ;

Plaintiff's Exhibits before E. H. Lamme, Standing
Master, Numbers 32, 33, 34 and 58 ;

Defendants' Exhibits before E. H. Lamme, Standing Master, numbers 51 to 69 ;

Plaintiff's Exhibits Numbers 66, 62, 61, 63, 64, 65, 46 and 47.

And Whereas, said exhibits above enumerated are in the nature of diagrams, maps and exhibits of material forming part of the evidence taken in the Court below, and being original papers in this cause and necessary to inspection by this Honorable Court and by the Honorable, the Supreme Court of the United States,

Now, therefore, it is furthermore stipulated that the same need not be printed, but shall, under a proper order of this Court, remain a part of the record of this cause, and shall, under the proper order of the Honorable, the Supreme Court of the United States, be held for safe keeping, transportation and return, upon the final determination of this cause, to the Clerk of the Circuit Court of the Ninth Circuit, Southern District of California—the said exhibits last above enumerated in the meantime to be received and considered by this Honorable Court, and the Honorable, the Supreme Court of the United States, with the other original papers in this cause, and in connection with the transcript of the proceedings.

JOSEPH H. CALL,
Special Asst. U. S. Attorney and
Solicitor for Plaintiff.

JOSEPH D. REDDING,
Solicitor for Defendants.

[Endorsed]: Stipulation as to Printing Record.
Filed Sept. 8, 1894. F. D. Monckton, Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
Southern District of California.*

THE UNITED STATES OF AMERICA,
Plaintiff,
vs.
THE SOUTHERN PACIFIC RAILROAD
COMPANY, and D. O. Mills and
Garrit L. Lansing, Trustees, and
the City Brick Company,
Defendants. }
Bill in Equity.

To the Judges of the Circuit Court of the United
States, for the Southern District of California:

The United States of America, by the Attorney
General thereof, brings this its Bill against the South-
ern Pacific Railroad Company, a corporation, organ-
ized and existing under and by virtue of the laws of
the State of California, D. O. Mills and Garrit L. Lan-
sing, Trustees, and the City Brick Company, a cor-
poration, organized and existing under and by virtue
of the general laws of California, each citizens of the
State of California; and thereupon your orator shows
that the following described land was acquired by the
United States of America from Mexico in the year
1846, and confirmed by treaty of Guadalupe Hidalgo
in the year 1848, and was then and ever since has
been public land of the United States, and during all
said times your orator was and still is the absolute

owner of said land, by title in fee simple, described as follows, to-wit:

All the sections of land designated by odd numbers in Townships 3 and 4 North, Ranges 5, 6 and 7 West; Township 1 North, Ranges 16, 17 and 18 West; Townships 6 and south $\frac{3}{4}$ of Township 7 North, Ranges 11, 12, 13, 14, 15, 16, 17, 18 and 19 West;

Also all the sections of land designated by odd numbers as shown by the public surveys embraced within the townships from Number 2 North to Number 5 North, both inclusive, and Ranges from Number 8 West to Number 18 West, both inclusive (except Sections 23 and 35, in Township 4 North, Range 15 West; and except Sections 1, 11 and 13, in Township 3 North, Range 15 West);

Also the unsurveyed lands within said area which will be designated as odd numbered sections when the public surveys according to the laws of the United States shall be extended over such townships, all surveyed by San Bernardino Base and Meridian, State of California.

Your orator further shows that by the Act of Congress approved July 27, 1866, entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the states of Missouri and Arkansas to the Pacific Coast," Congress incorporated the Atlantic and Pacific Railroad Company and granted to said company in aid of the construction of such railroad, a large amount of lands in the State of California and other states and territories, and to which said Act your orator refers. (See U. S. Statutes, Vol. 14, page 292.)

Section 3 of said Act provides as follows:

"That there be and hereby is granted to the Atlantic and Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific Coast, and to secure the safe and speedy transportation of mails, troops, munitions of war and public stores over the route of said line of railway and its branches, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile on each side of said railroad line, as said company may adopt, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State and whenever on the line thereof the United States have full title, not reserved, sold, granted or otherwise appropriated, and free from pre-emption or other claims, or rights, at the time the line of said road is designated, by a plat thereof filed in the office of the Commissioner of the General Land Office, and whenever prior to said time any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers or pre-empted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not including the reserved numbers; provided, that if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have been hereto-

fore granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this Act."

And Section 18 provides as follows:

"Sec. 18. That the Southern Pacific Railroad, a company, incorporated under the laws of the State of California, is hereby authorized to connect with the said Atlantic and Pacific Railroad, formed under this Act, at such point near the boundary line of the State of California as they shall deem most suitable for a railroad line to San Francisco, and shall have a uniform gauge and rate of freight or fare with said road, and in consideration thereof, to aid in its construction, shall have similar grants of land subject to all the conditions and limitations herein provided, and shall be required to construct its road on the like regulations as to time and manner with the Atlantic and Pacific Railroad herein provided for."

Your orator further shows that said Atlantic and Pacific Railroad Company duly accepted said grant and proceeded to construct said road, and did locate on the ground and designate upon a plat or map the whole of said line of railroad under said Act, from Springfield, Missouri, by way of the points and places named in said Act, and in the time and manner provided in said Act, to the Pacific Ocean; and on or about 1866, did file such plat in the office of the Commissioner of the General Land office, and which designation and location was approved by the Secretary of the Interior at that time,

and all the odd sections of public lands on each side of said road, for thirty miles, were thereupon withdrawn from market and reserved from sale.

Your orator further shows the Court that, by Section 23 of an Act of Congress, approved March 3, 1871, (see U. S. Stats., Vol. 16, p. 573), entitled, "An act to incorporate the Texas and Pacific Railroad Company, and to aid in the construction of its road and for other purposes," it was provided as follows:

"That for the purpose of connecting the Texas and Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California), to construct a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado river, with the same rights, grants and privileges, and subject to the same limitations, restrictions and conditions as were granted to said Southern Pacific Railroad Company of California, by the Act of July 27, 1866.

"provided, however, that this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company or any other railroad company."

Said Southern Pacific Railroad Company which then existed accepted said grant, and on April 3, 1871, did designate the line of its said road by a plat thereof, which it on that day filed in the office of the Commissioner of the General Land Office.

Your orator further shows that, by the Act of Congress approved July 6, 1866, entitled "An Act to forfeit the lands granted to the Atlantic and Pacific Rail-

road Company to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast, and to restore the same to settlement and for other purposes," all the lands and rights to lands in California theretofore granted and conferred upon said Atlantic and Pacific Railroad Company were forfeited, resumed and restored to the public domain for non-completion of that portion of said railroad to have been completed in California, no part of said road having been constructed in California.

Your orator alleges that on December 2, 1865, a corporation was organized under the laws of the State of California by the name and style of the Southern Pacific Railroad Company, and under a general law thereof, approved May 20, 1861, entitled "An Act to provide for the incorporation of railroad companies and the management of the affairs thereof, and other matters relating thereto," with the corporate name of the Southern Pacific Railroad Company. Said Act is printed in the Statutes of California, 1861, at page 607, and to which said Act your orator refers.

Said corporation was formed for the purpose and with the corporate power, as stated in its Articles of Incorporation of constructing, owning and maintaining a railroad from some point on the Bay of San Francisco, in the State of California, and to pass through the counties of Santa Clara, Monterey, San Louis Obispo, Tulare, Los Angeles and San Diego, to the town of San Diego in said state, thence eastward through said County of San Diego, to the eastern line of the State of California; there to connect with a

contemplated railroad from the eastern line of the State of California to the Mississippi River.

Your orator further shows that on October 11th, 1870, under and by virtue solely of the said general laws of the State of California, authorizing two or more railroad companies to consolidate and amalgamate their capital stock, debts, property, assets and franchises, said Southern Pacific Railroad Company, the San Francisco and San Jose Railroad Company, a railroad corporation then organized and existing under the laws of California, and the Santa Clara and Pajaro Valley Railroad Company, also a railroad corporation then organized and existing under the laws of California, did, without any authority from the United States, by a contract in writing, agree to consolidate and amalgamate their capital stock, debts, property, assets and franchises, making a different capital, issuing new stock, and creating a new and different corporation under the name and style of the Southern Pacific Railroad Company, which contract was signed, published and filed, as provided by the laws of California.

Your orator further alleges that, on the 12th day of August, 1873, under and by virtue solely of the law of the State of California of May 20, 1861, before referred to, authorizing the amalgamation and consolidation of two or more railroad companies, the said Southern Pacific Railroad Company pretended to be organized in 1870 as aforesaid, and the Southern Pacific Branch Railroad Company, each organized and then existing railroad companies under and by virtue of the laws of California, did, by a contract in writing, without

authority from the United States, agree to amalgamate and consolidate their capital stock, debts, property, assets and franchises, creating a new capital stock and issuing new certificates of stock and cancelling the old ones, and creating a new and different corporation by the name and style of the Southern Pacific Railroad Company, a copy of which new articles of association and incorporation are hereto attached, marked "Exhibit A," and did duly publish and file such new articles as required by the laws of California.

And your orator alleges that the Southern Pacific Railroad Company, which was organized and created on August 12, 1873, by the said pretended articles of amalgamation and consolidation of said several railroad companies as heretofore set forth, did construct and complete a railroad from Tehachapi Pass by way of Los Angeles to the Colorado river in the manner and within the time prescribed in said Act of Congress in which the Southern Pacific Railroad Company therein named was authorized and empowered to do, and there was not and is not now, any railroad or part thereof constructed or completed under said Act or between said points otherwise than as aforesaid.

Your orator further shows that the general routes of said Atlantic and Pacific Railroad Company and of said Southern Pacific Railroad Company under said Act of March 3, 1871, as said routes were located as aforesaid, cross each other in the state of California.

Your orator further alleges that said lands, in suit hereinbefore described, are situated on the general line of the said designated route of the Atlantic and

Pacific Railroad Company, less than twenty miles therefrom, and are less than twenty miles from said designated route of said Southern Pacific Railroad Company, and in such overlapping limits on the general route of each of said lines of road.

Your orator further shows that said lands have never been granted, sold, reserved, occupied by homestead settlers, pre-empted or otherwise disposed of by the United States or by the Mexican or Spanish governments, or any other government or authority, in whole or in part, or any estate or interest therein, otherwise than as set forth herein, and are not mineral lands.

Your orator further alleges that none of the lands in suit herein described as aforesaid have ever been granted or conveyed to any or either of the defendants herein, or to said Southern Pacific Railroad Company, organized by said articles of August 12, 1873, and that said last named company has at all times failed and refused to pay into the Treasury of the United States the cost of surveying, selecting and conveying said lands.

Your orator alleges that said Southern Pacific Railroad Company, to which corporation said grant was made by said Act of Congress of March 3, 1871, did not build or construct any portion of said railroad designated in said act to be constructed.

Your orator further alleges that defendants D. O. Mills and Garrit L. Lansing have a mortgage or deed of trust from defendant railroad company for the above described land, to secure the payment of certain indebtedness of said defendant company to them as

trustees, which mortgage is dated April 1, 1875, and which is executed in due form of law, and is recorded in Los Angeles and San Bernardino counties, California, and constitutes a cloud upon the title of your orator.

Your orator alleges that all of said lands were and are naturally timbered and wooded lands, and valuable chiefly for the timber and wood thereon.

Your orator further alleges that defendant Southern Pacific Railroad Company has, while claiming and pretending to own said lands, at various and divers times during the last ten years, by pretended conveyances, executed in due form of law, pretended to sell and convey large portions of said lands, and the wood and timber thereon, to various and divers persons to your orator unknown; and has thus realized from such wood and timber large sums of money which it has appropriated and converted to its own use.

That the names of such pretended purchasers, amounts and descriptions of land so pretended to be sold, and moneys realized therefrom by said defendant railroad company, are unknown to your orator; and as to all said matters the plaintiff asks that defendants may answer fully as to the exact nature and extent thereof, giving the dates, amounts received, names of purchasers, and extent of adverse claims.

And your orator asks that, when such pretended purchasers and adverse claimants become known to the plaintiff, that they may be added as parties defendant herein.

Your orator alleges, upon information and belief, that defendant the City Brick Company makes some claim to all or a portion of said lands, the nature and extent of which claim is unknown to your orator, but which your orator prays may be fully disclosed by said defendant.

Your orator alleges that defendant railroad company now claims to own said lands and denies the plaintiff's right and title thereto; and said company, and said pretended purchasers from it, by its license and direction, have, during the past five years at many and diverse times to your orator unknown, unlawfully entered upon said lands, chopped down the timber and trees thereon, then the property of your orator, carried away such timber and used and converted the same to their own use, the amount and value of which is unknown to your orator but which is the greater part of the wood and timber naturally on said land; and are now removing from said lands wood cut thereon, and threatening to chop down other trees on said land and remove all said wood, and unless enjoined will do so, to the great and irreparable injury of the plaintiff.

Your orator further shows that the amount in controversy herein exceeds the sum or value of \$5,000, exclusive of interest and costs.

Your orator alleges that by reason of the premises the defendants herein have surrendered, forfeited and released to the United States all rights and franchises and lands, if they had any such, granted by said Acts of Congress aforesaid, and which surrender, forfeiture and release the plaintiff prays may be enforced as to

the land in suit herein without prejudice to other rights of the United States.

In tender consideration whereof, and for as much as the plaintiff is remediless at and by strict rules of the common law, and can only be relieved in a Court of equity, your orator prays that its title to said lands may be quieted and that said mortgage to defendants Mills and Lansing may be decreed to be null and void and vacated, and that the defendants and each of them be forever enjoined from asserting or claiming any right or title thereto adverse to the plaintiff, and your orator prays that the defendants each and their agents be forever enjoined from cutting any tree or wood upon said land and from in any way injuring the trees growing thereon, and from removing or causing to be removed from said land any wood or timber now cut thereon or hereafter cut thereon.

Your orator further prays for an accounting from the defendant Southern Pacific Railroad Company for all wood and timber sold by it, and for all the moneys and profits realized from the sale or pretended sale of such lands containing wood and timber, and for such other and further relief as the Court may deem equitable in the premises.

May it please your Honors to grant unto your orator a writ of injunction issuing out of and under the seal of this Honorable Court, directed to defendants The Southern Pacific Railroad Company, and D. O. Mills and Garrit L. Lansing, Trustees, and the City Brick Company, enjoining them and each of them from asserting any right, claim or title to said lands, and from denying plaintiff's title thereto, and

enjoining them each from cutting any tree or wood now on said land, and from removing any wood or timber now cut on said land.

May it please your Honors to grant unto your orator a writ of subpoena issuing out of and under the seal of this Honorable Court, to be directed to the Southern Pacific Railroad Company, D. O. Mills and Garrit L. Lansing, Trustees, and the City Brick Company, commanding them each, on a certain day and under a certain penalty therein to be inserted, to be and appear before your Honors, and then and there answer the premises and further to stand to and abide such order and decree therein as shall be agreeable to equity and good conscience, and your orator will ever pray.

Your orator waives answer under oath.

- 7 -
JOSEPH H. CALL,

Special Asst. U. S. Attorney and of Counsel for Plaintiff.

WILLOUGHBY COLE,

United States Attorney Southern District of California.

*In the Circuit Court of the United States, Ninth Circuit,
Southern District of California.*

UNITED STATES OF AMERICA,
Plaintiff,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY, ET AL.,
Defendants. } No. 184.

Comes now the above-named plaintiff, and by leave of Court first obtained, files this its amendment to the bill of complaint herein by adding the following paragraph, inserting the same after the last numbered paragraph in the bill of complaint herein, as follows, to-wit:

Your orator further alleges that when said grant to said Southern Pacific Railroad company was made by said Act of Congress of March 3d, 1871, it was found that the line of route which said company was required to adopt, and which it did adopt, was upon the same general line as the route of the said Atlantic and Pacific Railroad Company from Springfield, Missouri, to the Pacific; that the route of the said Atlantic and Pacific Railroad Company from Springfield, Missouri, to the Pacific, as said grant was made to said company by the said Act of Congress of July 27, 1866, and as said route was located and adopted by said company was and is upon the same general line as the route of said Southern Pacific Railroad Company from Tehachapi Pass by way of Los Angeles to the Colorado River at Fort Yuma, according to the terms of said grant to said Southern Pacific Railroad Company of March 3, 1871,

and as said route was in fact adopted and located, and that the lands in suit herein were at the intersection of said two lines of route and at the place where said two routes were and are upon the same general line, and were excluded and deducted from the later grant to said Southern Pacific Railroad Company.

JOSEPH H. CALL,
Special Assistant United States Attorney.

WILLOUGHBY COLE,
United States Attorney for the Southern District of California.

[Endorsed.] No. 184. United States Circuit Court Southern Dist. of Cal. United States vs. Southern Pacific Railroad Co., et. al. Amendment to Bill. Copy served on J. D. Redding, March 6, 1891, Joseph H. Call, Sol. for plff. Filed March 6th, 1891, Wm. M. Van Dyke, Clerk.

In the United States Circuit Court, Southern District of California, Ninth District.

UNITED STATES OF AMERICA, Plaintiff, }
vs. } No. 184,
SOUTHERN PACIFIC RAILROAD COMPANY ET AL., } Order of Court.
Respondents and Defendants.

Good cause being shown, it is hereby ordered: That the complainant may withdraw its replication herein, and the same is hereby deemed to be withdrawn, and said complainant may, within sixty (60) days from

entering of this order, file its amended bill upon serving a copy thereof upon the solicitor of the respondents, Joseph D. Redding.

It is further ordered: That the answer of respondent Southern Pacific Railroad Company, now on file herein, shall stand so far as may be applicable, as the answer of all the respondents herein, including those parties who may be brought in by such amended bill, provided that all the respondents shall have sixty (60) days from the time of filing such amended bill in which to further answer or plead.

It is further ordered: That the time for taking testimony in this case shall commence to run only from the time of filing replication herein.

LORENZO SAWYER,
Circuit Judge.

The parties to the above-entitled suit hereby consent to the making and entering of the foregoing order.

JOSEPH H. CALL,
Solicitor for Complainant, and Special Asst.
United States Attorney.

JOSEPH D. REDDING,
Solicitor for Respondents.

Aug. 17, 91.

[Endorsed]: No. 184. U. S. Circuit Court, Southern District of California. United States of America. Complainants vs. The Southern Pacific R. R. Co., et al., Defendants. Order. Filed August 20th, 1891. Wm. M. Van Dyke, Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
Southern District of California.*

THE UNITED STATES OF AMERICA,
Plaintiff.
vs.

THE SOUTHERN PACIFIC RAILROAD
COMPANY, and D. O. Mills and
Garrit L. Lansing, Trustees, The
City Brick Company, Atlantic and
Pacific Fibre Importing and Man-
ufacturing Company, Limited;
Julius Abrahamson, Hugo Abra-
hamson, Mrs. Jesus Ord de An-
drade, Mrs. Thomas Allison, Mrs.
Mary Backman, Mrs. Matilda L.
Barber, Henry A. Barclay, E. T.
Barber, Thomas N. Beck, A. M.
Benham, Jessie Martin Blanchard,
E. H. Blood, Ira H. Bradshaw, B.
B. Briggs, Philomela T. Bunell,
Frederick H. Busby, A. W. Butler,
H. A. Bond, William H. Carlson,
William H. Carlson, V. E. Car-
son, B. F. Carter, Benjamin
F. Carter, Harry Chandler, Fred.
Chandler, Walter S. Chaffee, J.
N. Chapman, F. O. Christensen,
Mrs. L. C. Chormicle, Byron O.
Clark, George Claussen, Clarencee
T. Cleve, Nicholas Cochems, Na-
than Cole, Jr., Peter Cook, I. D.

Cory, Seaton T. Cull, Stefano |
Cuneo, J. A. Dahl, Andrew J. Dar-
ling, Thomas A. Delano, Richard
Dillon, John Ditter, David Dol-
been, John F. Duehren, James F.
Dunsmoor, Edward G. Durant,
Robert Dunn, Henry Elms, Fair-
mont Land and Water Company,
Farming and Fruit Land Com-
pany, George W. Fentrees, S. W.
Ferguson, William Ferguson, Wil-
liam Freeman, Joseph W. Furni-
val, J. Garber, F. C. Garbutt, J.
Drew Gay, F. A. Geier, Ambrose
F. George, Will D. Gould, Mrs.
Mary L. Gould, Thomas E. Gould,
James Greton, W. F. Grosser, D.
J. Haines, Herman Haines, James
M. Hait, Simeon Hamberg, Jacob
Harpe, Alice A. Hall, Calvin Hart-
well, William T. Hamilton, Wil-
liam T. Hamilton, Peter James
Hamilton, Peter Hamilton, John
C. Haskell, John C. Hay, Mary
Jackson Hall, Julius Heyman,
J. M. Hill, John D. Hoffman,
August Hoelling, J. F. Holbrook,
W. R. Hughes, George A. Hunter,
J. F. Houghton, E. J. Ismert, W.
W. Jenkins, Thomas J. Johannsen,
M. D. Johnson, John J. Jones, A.
S. Joseph, John Kenealey, Fred-

vs. THE UNITED STATES.

erick Kenworthy, Richard Kichline, Joseph Kurtz, Charles Kutschmar, Mrs. Ammoretta J. Lanterman, T. B. Lawhead, L. B. Lawson, Lawson M. La Fetra, Stephen L. Leighton, Miguel Leonis, George Loomis, George Loomis, Marion C. Loop, Pablo Lopez, Daniel Luce, G. W. Mack, John B. Martin, Cora L. Mathison, Ezra May, Angus S. McDonald, A. M. Melrose, Mrs. Flossy Melrose, W. E. McVay, Thomas Mensies, J. G. Miller, John Million, Mrs. Mamie O. Million, H. H. Mize, Thomas F. Mitchell, W. H. Mosely, L. E. Mosher, Joseph Mullally, Andrew Myers, D. C. Newcomb, Albert E. Nettleton, North Pasadena Land and Water Company, James O'Reilly, George L. Ott, Pacific Coast Oil Company, J. H. Painter, M. D. Painter, Mrs. Annie Palen, J. R. Pallett, W. A. Pallett, T. A. Pallett, C. O. Parsons, F. W. Pattee, James Peirano, John J. Peckham, Ramon Pereira, Daniel Phelan, Edward E. Perley, McH. Pierce, William Pisch, R. M. Pogson, A. W. Potts, Lafayette S. Porter, A. J. Praster, F. H. Prescott, Lewis H. Price, Charles Rag-

gis, W. B. Ralphs, James B. Randolph, C. P. Randolph, F. M. Randolph, Francisco Real, George H. Reed, John Rea, Otto Rinderknecht, Felipe Rivera, James Robertson, George D. Rowan, S. D. Savage, Jacob Scherer, George W. Seifert, Luciano Sequois, Henry C. Shearman, Henrietta Shirpser, Rebecca Jetta Shirpser, David Shirpser, Max Shirpser, Gianbatista Sinaco, J. S. Slauson, J. Wallen Smith, Mrs. Maggie Smith, E. Sommer, W. A. Spenceer, H. G. Stevenson, H. J. Stevenson, M. W. Stimson, Robert Strathearn, R. P. Strathearn, Eleanor Sussman, D. M. Sutherland, John Sweeney, W. H. Teggart, James P. Taylor, Mary G. Tongier, James R. Townsend, Mrs. C. L. True, L. Tunison, J. S. Turner, George S. Umpleby, F. Veysset, George Vilas, Alden R. Vining, Daniel A. Wagner, S. A. Waldron, W. W. Wallace, C. H. Watts, Mrs. Julia J. Wheeler, A. C. Whitaere, M. L. Wicks, Moye Wicks, Mrs. Jennie L. Wicks, Mary C. Williams, C. N. Wilson, Robert N. C. Wilson, J. Youngblood,

Defendants.

To the judges of the Circuit Court of the United States,
for the Southern District of California :

I.

The United States of America, by the Attorney-General thereof, by an order of Court first had and obtained, brings this its amended bill of complaint against: The Southern Pacific Railroad Company, acting as a corporation under and by virtue of the authority hereinafter set forth; D. O. Mills and Garrit L. Lansing, trustees; the City Brick Company, a corporation organized and existing under and by virtue of the general laws of the State of California; the Atlantic and Pacific Fibre Importing and Manufacturing Company, Limited, a corporation organized and existing under and by virtue of the laws of Great Britain; the Fairmont Land and Water Company, the Farming and Fruit Land Company; the North Pasadena Land and Water Company, and the Pacific Coast Oil Company, each a corporation organized and existing under and by virtue of the laws of California; and Julius Abrahamson, Hugo Abrahamson, Mrs. Jesus Ord de Andrade, Mrs. Thomas Allison, Mrs. Mary Backman, Mrs. Matilada L. Barber, Henry A. Barclay, E. T. Barber, Thomas N. Beck, A. M. Benham, Jesse Martin Blanchard, E. H. Blood, Ira H. Bradshaw, B. B. Briggs, Philomela T. Bunell, Frederick H. Busby, A. W. Butler, H. A. Bond, William H. Carlson, William H. Carlson, V. E. Carson, B. F. Carter, Benjamin F. Carter, Harry Chandler, Fred Chandler, Walter S. Chaffee, J. N. Chapman, F. O. Christensen, Mrs. L. C. Chormicle,

Byron O. Clark, George Claussen, Clarence T. Cleve, Nicholas Cochems, Nathan Cole, Jr., Peter Cook, I. D. Cory, Seaton T. Cull, Stefano Cuneo, J. A. Dahl, Andrew J. Darling, Thomas A. Delano, Richard Dillon, John Ditter, David Dolbeen, John F. Duehren, James F. Dunsmoor, Edward G. Durant, Robert Dunn, Henry Elms, George W. Fentrees, S. W. Ferguson, William Ferguson, William Freeman, Joseph W. Furnival, J. Garber, F. C. Garbutt, J. Drew Gay, F. A. Geier, Ambrose F. George, Will D. Gould, Mrs. Mary L. Gould, Thomas E. Gould, James Greton, W. F. Grosser, D. J. Haines, Herman Haines, James M. Hait, Simeon Hamberg, Jacob Harpe, Alice A. Hall, Calvin Hartwell, William T. Hamilton, William T. Hamilton, James Hamilton, Peter Hamilton, John C. Haskell, John C. Hay, Mary Jackson Hall, Julius Heyman, J. M. Hill, John D. Hoffman, August Hoeling, J. F. Holbrook, W. R. Hughes, George A. Hunter, J. F. Houghton, E. J. Ismert, W. W. Jenkins, Thomas J. Johannsen, M. D. Johnson, John J. Jones, A. S. Joseph, John Kenealey, Frederick Kenworthy, Richard Kichline, Joseph Kurtz, Charles Kutschmar, Mrs. Ammoretta J. Lanterman, T. B. Lawhead, L. B. Lawson, Lawson M. La Fetra, Stephen L. Leighton, Miguel Leonis, George Loomis, George Loomis, Marion C. Loop, Pablo Lopez, Daniel Luce, G. W. Mack, John B. Martin, Cora L. Mathiason, Ezra May, Angus S. McDonald, A. M. Melrose, Mrs. Flossy Melrose, W. E. McVay, Thomas Mensies, J. G. Miller, John Million, Mrs. Mamie O. Million, H. H. Mize, Thomas F. Mitchell,

W. H. Mosely, L. E. Mosher, Joseph Mullally, Andrew Myers, D. C. Newcomb, Albert E. Nettleton, James O'Reilly, George L. Ott, J. H. Painter, M. D. Painter, Mrs. Annie Palen, J. R. Pallett, W. A. Pallett, T. A. Pallett, C. O. Parsons, F. W. Pattee, James Peirano, John J. Peckham, Ramon Perea, Daniel Phelan, Edward E. Perley, McH. Pierce, William Pisch, R. M. Pogson, A. W. Potts, Lafayette S. Porter, A. J. Praster, F. H. Prescott, Lewis H. Price, Charles Raggis, W. B. Ralphs, James B. Randol, C. P. Randolph, F. M. Randolph, Francisco Real, George H. Reed, John Rea, Otto Rinderknecht, Felipe Rivera, James Robertson, George D. Rowan, S. D. Savage, Jacob Scherer, George W. Seifert, Luciano Sequoia, Henry C. Shearman, Henrietta Shirpser, Rebecca Jetta Shirpser, David Shirpser, Max Shirpser, Gianbatista Sinaco, J. S. Slauson, J. Wallen Smith, Mrs. Maggie Smith, E. Sommer, W. A. Spencer, H. G. Stevenson, H. J. Stevenson, M. W. Stimson, Robert Strathearn, R. P. Strathearn, Eleanor Sussman, D. M. Sutherland, John Sweeney, W. H. Taggart, James P. Taylor, Mary G. Tongier, James R. Townsend, Mrs. C. L. True, L. Tunison, J. S. Turner, George S. Umpleby, F. Veysset, George Vilas, Alden R. Vining, Daniel A. Wagner, S. A. Waldron, W. W. Wallace, C. H. Watts, Mrs. Julia J. Wheeler, A. C. Whitaere, M. L. Wicks, Moye Wicks, Mrs. Jennie L. Wicks, Mary C. Williams, C. N. Wilson, Robert N. C. Wilson and J. Youngblood; and each of said defendants being a citizen of the State of California, and residing therein, except said Atlantic and Pacific Fibre Importing and Manufacturing Company, Limited, which, as your orator alleges upon its

information and belief, is a citizen of Great Britain and a British subject;

And thereupon your orator alleges and shows unto the Court that the lands hereinafter described were acquired by the United States of America from Mexico in the year 1846, and the title to said lands were confirmed to your orator by treaty of Guadalupe Hidalgo in the year 1848; and all of said lands were then, ever since have been, and now are owned by the United States, by title in fee simple, and your orator during all of said times has been, and now is, in possession thereof; said lands being described as follows, to wit:

All of the sections of land designated by odd numbers in Townships three (3) and four (4) North, Ranges five (5), six (6) and seven (7) West; Township one (1) North, Ranges sixteen (16), seventeen (17) and eighteen (18) West; Townships six (6) and south three-fourths of Township seven (7) North, Ranges eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17) eighteen (18) and nineteen (19) West; also all the sections of land designated by odd numbers as shown by the public surveys, embraced within the Townships from number two (2) North to number five (5) North, both numbers included, and Ranges from number eight (8) West to number eighteen (18) West, both numbers included, except Sections twenty-three (23) and thirty-five (35), in Township four (4) North, Range fifteen (15) West, and except Sections one (1), eleven (11) and thirteen (13), in Township three (3) North, Range fifteen (15) West, also the unsurveyed

lands within said area which will be designated as odd numbered sections when the public surveys according to the laws of the United States shall have been extended over such townships; all of the aforesaid lands being surveyed by San Bernardino Base and Meridian, and situated within the State of California.

II.

Your orator further shows that, by the Act of Congress approved July 27, 1866, entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," Congress incorporated the Atlantic and Pacific Railroad Company, and granted to said company, in aid of the construction of such railroad, a large amount of lands in the State of California and other States and Territories, and to the whole of which said Act your orator refers. (See U. S. Statutes, Volume 14, Page 292).

Section 3 of said Act, provides as follows:

"That there be and hereby is granted to the Atlantic and Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific Coast, and to secure the safe and speedy transportation of mails, troops, munitions of war and public stores, over the route of said line of railway and its branches, every alternate section of public land not mineral designated by odd numbers, to the amount of twenty alternate sections per mile on each side of said railroad line, as said company may adopt, through the Territories of the United States, and ten alternate

sections of land per mile on each side of said railroad whenever it passes through any State, and whenever on the line thereof the United States have full title, not reserved, sold, granted or otherwise appropriated, and free from pre-emption or other claims, or rights, at the time the line of said road is designated, by a plat thereof filed in the office of the Commissioner of the General Land Office, and whenever prior to said time any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not including the reserved numbers; provided, that if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have been heretofore granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act."

And Section 18 of said act provides as follows:

"Sec. 18. That the Southern Pacific Railroad, a company incorporated under the laws of the State of California, is hereby authorized to connect with the said Atlantic and Pacific Railroad, formed under this Act, at such point near the boundary line of the State of California as they shall deem most suitable for a railroad line to San Francisco, and shall have a uniform gauge and rate of freight or fare with said road,

and in consideration thereof, to aid in its construction, shall have similar grants of land subject to all the conditions and limitations herein provided, and shall be required to construct its road on the like regulations as to time and manner with the Atlantic and Pacific Railroad herein provided for."

Your orator further shows that said Atlantic and Pacific Railroad Company duly accepted said grant and proceeded to construct said road, and did locate on the ground and designate upon a plat or map the whole of said line of railroad under said Act, from Springfield, Missouri, by way of the points and places named in said Act, and in the time and manner provided in said Act, to the Pacific Ocean; and on or about , 1866, did file such plat in the office of the Commissioner of the General Land Office, and which designation and location was approved by the Secretary of the Interior at that time, and all the odd sections of public lands on each side of said road for thirty miles were thereupon withdrawn from market and reserved, including said lands in suit herein which fell within the twenty-mile limits of said line.

III.

Your orator further shows the Court that, by Section 28 of an Act of Congress, approved March 3, 1871 (see U. S. Stats., Vol. 16, p. 573), entitled "An Act to Incorporate the Texas and Pacific Railroad Company, and to aid in the construction of its road and for other purposes," it was provided as follows:

"That for the purpose of connecting the Texas and Pacific Railroad with the city of San Francisco, the

Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, with the same rights, grants and privileges, and subject to the same limitations, restrictions and conditions as were granted to said Southern Pacific Railroad Company of California by the Act of July 27, 1866.

"Provided, however, that this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company or any other railroad company."

IV.

Your orator further shows that, by the Act of Congress approved July 6, 1886, entitled "an Act to forfeit the lands granted to the Atlantic and Pacific Railroad Company to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast and to restore the same to settlement, and for other purposes;" all the lands and rights to lands in California theretofore granted and conferred upon the said Atlantic and Pacific Railroad Company were forfeited and resumed to the United States, and restored to the public domain, for non-completion of that portion of said railroad to have been completed in California, no part of said road having been constructed in California.

V.

Your orator is informed and believes, and so alleges the fact to be, that the defendants herein make some

claim of ownership to the lands above described, the exact nature and extent of such claims being unknown to your orator; but your orator is informed and believes, and so alleges the fact, that said defendants claim said lands under and by virtue of said Act of Congress of March 3d, 1871, above set forth, granting lands to the Southern Pacific Railroad Company to aid in the construction of a railroad and telegraph line from Tehachapi Pass, via Los Angeles, to a point at or near the Colorado river, and to there connect with said Texas and Pacific Railroad Company; and said defendants claim that said Southern Pacific Railroad Company did accept the terms and conditions of said grant, and did designate the route of its road between said points within the time and manner provided in said Act of Congress, but your orator alleges that the designated line of route of said Southern Pacific Railroad Company so claimed and pretended to be located as aforesaid lies upon the same line as that of the Atlantic and Pacific Railroad Company, and the lands in suit herein, if said Southern Pacific Railroad Company had designated its said line of route as claimed by said defendants, would be at the place where the said routes would be upon the same general line, and such routes would have intersected each other.

VI.

Your orator further alleges that, if said Southern Pacific Railroad Company had designated its line of route from Tehachapi Pass by way of Los Angeles to a point at or near the Colorado River as claimed by

defendants herein, or between such terminal points at all, that such route would have been upon the same general line as the route of said Atlantic and Pacific Railroad Company, located as aforesaid, and all the lands in suit herein would have fallen within the limits of the grant to each of said companies, and in such overlapping limits within the twenty-mile and primary limits of said Atlantic and Pacific Railroad; but your orator alleges that none of said lands were covered by said grant to said Southern Pacific Railroad Company, and none of said lands were of the category of lands which were to be granted to said company.

VII.

Your orator further alleges and shows unto the Court that all of the lands in suit herein are situated within twenty miles of the designated line of route of said Atlantic and Pacific Railroad Company and within the primary and twenty mile limits of said grant; and as respects the mineral character of said lands, and of every tract thereof, they were in the same condition in that respect during the whole of the year 1866, that they have been at all times from that year down to and including the 3d day of April, 1871.

VIII.

Your orator is informed and believes, and so alleges the fact to be, that the claim of defendants to said lands is invalid, and not founded upon any legal or equitable right, but is a mere pretence and excuse for the defendants to trespass upon said lands.

IX.

Your orator is informed and believes, and so alleges the fact to be, that the defendants herein claim that a line of railroad and telegraph line, from Tehachapi Pass, by way of Los Angeles, to the Colorado river, has been constructed by the Southern Pacific Railroad Company within the time and in the manner provided by said Act of Congress of March 3, 1871, above referred to, in which it is therein provided for the construction of a railroad and telegraph line between said points, and that commissioners appointed by the President of the United States have reported that such railroad was constructed in all respects in compliance with said Act; but your orator alleges that such claims and pretences are unfounded, and that said Southern Pacific Railroad Company named in said Act of Congress of March 3, 1871, has not constructed any railroad or telegraph line between said points within the time or manner provided by said Act, nor at all.

X.

Your orator further alleges that on December 2, 1865, a corporation was organized under the laws of the State of California by the name and style of the Southern Pacific Railroad Company, and under a general law thereof, approved May 20, 1861, entitled "An Act to provide for the incorporation of railroad companies and the management of the affairs thereof, and other matters relating thereto," which said Act is printed in the Statutes of California of 1861, at page 607, and to which Act your orator refers,

XI.

Your orator further alleges that said corporation was formed for the purpose, and with the corporate power, as stated in its Articles of Incorporation, of constructing, owning and maintaining a railroad from some point on the bay of San Francisco, in the State of California, and to pass through the counties of Santa Clara, Monterey, San Luis Obispo, Tulare, Los Angeles and San Diego to the town of San Diego, in said State; thence eastward, through said county of San Diego to the eastern line of the State of California, there to connect with the contemplated railroad from the eastern line of the State of California to the Mississippi River.

XII.

Your orator further shows that, on October 11, 1870, said Southern Pacific Railroad Company entered into pretended articles of consolidation and amalgamation with the San Francisco and San Jose Railroad Company, a corporation organized under the laws of California with similar powers, and the Santa Clara and Pajaro Valley Railroad Company, also a corporation organized under the laws of California with similar powers, by which pretended articles of consolidation and amalgamation said several companies agreed to consolidate and amalgamate their capital stock, debts, property, assets and franchises, making a different capital, issuing new stock and creating a new and different corporation by the name and style of "The Southern Pacific Railroad Company," which pretended articles were signed, published and filed in the mode

as provided by said general law of California; but your orator alleges that the articles of incorporation of said railroad companies respectively, and of neither of them, authorized said companies to consolidate or amalgamate with any other railroad company; and your orator is informed and believes, and so alleges the fact to be, that such pretended consolidation was unauthorized by the laws of the State of California, and without the consent of said State, and was unauthorized by the laws of the United States, and without authority from the United States, and that such pretended consolidation was, and is illegal and void.

XIII.

Your orator further alleges and shows unto the Court, that on the 12th day of August, 1873, said Southern Pacific Railroad Company, the corporation pretended to be created by said articles of consolidation and amalgamation of October 11, 1870, as aforesaid, and the Southern Pacific Branch Railroad Company, a corporation organized and existing under the laws of the State of California, formed for the purpose and with the corporate power as stated in its articles of incorporation, of constructing, owning and maintaining a railroad within the State of California, did pretend to consolidate and amalgamate their capital stock, debts, franchises, and rights, and did enter into pretended articles of consolidation and amalgamation, by which said two companies agreed to amalgamate and consolidate their capital stock, debts, property, assets and franchises, creating a new capital stock and issuing new certificates of stock and purporting to cre-

ate a new and different corporation by the name and style of "The Southern Pacific Railroad Company," a copy of which pretended articles of consolidation and amalgamation are hereto attached, marked "Exhibit A," and made a part hereof; and did duly sign such articles and publish and file the same as required in that respect by the laws of the State of California ; but your orator alleges that the articles of incorporation of said two companies respectively, and neither of them, authorized or empowered said companies or either of them to enter into any consolidation or amalgamation with any other railroad company, and did not authorize them or either of them to sell or transfer its entire railroad to any other railroad company; and your orator alleges that such pretended articles of consideration and amalgamation were illegal and void, and were unauthorized and prohibited by the laws of the State of California, and were unauthorized and prohibited by the laws of the United States; and were entered into without any authority from the Congress of the United States or any other competent authority; and by entering into such pretended articles of consolidation and amalgamation said Southern Pacific Railroad Company, which was named in said Act of Congress of March 3, 1871, forfeited, abandoned and released to the United States all the lands granted by said Act of Congress of March 3, 1871, and all the rights, grants, franchises and privileges conferred by said Act, and all right to earn or acquire any and all lands under said Act.

XIV.

Your orator is informed and believes, and so alleges the fact to be, that the Southern Pacific Railroad Company which is defendant herein, claims to have pretended patents issued by the United States in due form of law to it said Southern Pacific Railroad Company, purporting to convey to said Company a portion of the lands in suit herein, but which lands are unknown to your orator; but your orator alleges that if any such patents were issued they were issued illegally and without any authority of law, and are illegal and void.

XV.

Your orator is informed and believes, and so alleges the fact to be, that certain of the defendants herein, but which defendants are unknown to your orator, claim to be bona fide purchasers for value from the Southern Pacific Railroad Company, the corporation named in said Act of Congress of March 3, 1871, and claim that their rights to certain tracts of land are protected and confirmed by the Act of Congress, approved March 3, 1887, entitled "An Act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads, and for the forfeiture of unearned lands, and for other purposes." (See 24 Statutes, 556).

XVI.

Your orator further alleges and shows unto the Court that defendants D. O. Mills and Garrit L. Lansing have a mortgage or deed of trust from defendant Southern Pacific Railroad Company, covering or pur-

porting to cover the above described lands, to secure the payment of certain indebtedness of said defendant company to them as trustees, which mortgage is dated April 1, 1875, and which is executed in due form of law and is recorded in Los Angeles, and San Bernardino and Ventura counties, in which said lands are situated, and constitutes a cloud upon the title of your orator.

XVII.

Your orator further alleges that said lands above described are naturally timbered or wooded lands and valuable for the timber and wood thereon; and that defendants herein, while claiming and pretending to own some interest in said lands, at various and divers times during the last five years, at many and divers times to your orator unknown, have unlawfully entered upon said lands, chopped down the timber and trees thereon, then the property of your orator, and carried away such timber and trees and converted the same to their own use, the amount and value of which is unknown to your orator, and are now removing from said lands wood cut thereon, and threatening to chop down other trees on said land, and unless enjoined will do so, to the great and irreparable injury of your orator.

XVIII.

Your orator further shows that the amount in controversy in this suit exceeds the sum or value of five thousand dollars, exclusive of interest and costs.

XIX.

Your orator is informed and believes, and so alleges the fact to be, that defendant Southern Pacific Rail-

road Company, while pretending and claiming to own some interest in said lands, at various and divers times during the past ten years to your orator unknown, by pretended contracts and conveyances has pretended to sell and convey large portions of said lands to the other defendants herein, the amount and descriptions of which are unknown to your orator, and has thus realized from wood and timber on said land large sums of money which it has appropriated and converted to its own use.

To the end, therefore, that said defendants may, if they can, show why your orator should not have the relief herein prayed, and to fully answer the premises, but not upon oath or affirmation, the benefit whereof is expressly waived by the complainant, and according to the best and utmost of their several and respective knowledge, remembrance, information and belief, full, true, direct and perfect answer make to such of the several interrogatories hereinafter numbered and set forth as by the note hereinunder written they are respectively required to answer, that is to say:

Said defendant Southern Pacific Railroad Company is required to state: (1) the names of all of the pretended purchasers of said lands or any portion thereof from said company; (2) the amounts and descriptions of lands so pretended to be sold; (3) all moneys realized from said defendants respectively by said company;

(4) Each and all of said defendants are required to state the nature and extent of their pretended claim or claims to said lands.

And to the further end, therefore, that plaintiff may have that relief which it can only obtain in a Court of Equity, and that said defendants may answer the premises, your orator prays that, if it shall be found that Commissioners, pretending to be appointed by the President of the United States for that purpose, have reported that said pretended railroad and telegraph line from Tehachapi Pass, via Los Angeles to the Colorado River, have been constructed and completed in a good, substantial and workmanlike manner as in all respects required by said Act of March 3, 1871, heretofore referred to, and by such report that such pretended railroad has been pretended to be accepted by them or by the President of the United States, and that such pretended report or reports constitute a cloud upon the title of your orator to said lands, then your orator prays that such pretended report or reports may be set aside, annulled and cancelled.

And your orator further prays that said Articles of Consolidation and Amalgamation, dated August 12, 1873, between said Southern Pacific Railroad Company and said Southern Pacific Branch Railroad Company may be set aside, annulled and cancelled, and that the contract of sale therein set forth, by which the Southern Pacific Railroad Company named in said Act of Congress of March 3, 1871, purports to sell and convey to the pretended consolidated company, purported to be created by such articles, all its rights, grants, privileges, assets and property, and all the rights, grants, privileges, property, assets and lands granted and conferred by the United States by said

Act of Congress of March 3, 1871, to the Southern Pacific Railroad Company therein named, may be set aside, annulled and cancelled.

And your orator further prays that said mortgage and deed of trust executed by said Southern Pacific Railroad Company, defendant herein, to D. O. Mills and Garrit L. Lansing as Trustees, may be set aside, annulled and cancelled.

And your orator further prays that its title to said lands may be quieted, and that defendants, and each of them, be barred and estopped from having, asserting or claiming any right, title or interest therein adverse to your orator; and your orator prays that said pretended patent from the United States to the Southern Pacific Railroad Company may be set aside, cancelled and annulled, and that defendants be forever enjoined from chopping down or carrying away any wood, trees or timber upon said land.

And your orator further prays that an account may be taken by and under the direction and decree of this Honorable Court for all moneys and profits realized by said defendants from wood, timber and trees taken from said land, and for all moneys and profits realized by defendant Southern Pacific Railroad Company from the pretended sale of said lands.

And your orator further prays that, if it shall be found that any of the defendants herein are bona fide purchasers for value of any of said lands within the meaning of said Act of Congress of March 3, 1887 then your orator prays that such defendants may be protected in their title to said lands by decree of this Honorable Court, and that your orator may have judg-

ment against defendant railroad Company for the sum of two dollars and fifty cents per acre for all such lands, if any, which this Honorable Court may find to be held by defendants herein as such bona fide purchasers for value.

And your orator prays for such other and further relief as the Court may deem equitable in the premises.

Your orator waives answer under oath.

JOSEPH H. CALL,
Special Asst. U. S. Attorney and Solicitor for
Complainant.

W. H. H. MILLER,
Attorney General.

UNITED STATES OF AMERICA.

Circuit Court of the United States, Ninth Circuit, Southern District of California.

IN EQUITY.

The President of the United States of America,
Greeting:

To the Southern Pacific Railroad Company, and D. O. Mills and Garrit L. Lansing, trustees; the City Brick Company, Atlantic and Pacific Fibre Importing and Manufacturing Company, limited; Julius Abrahamson, Hugo Abrahamson, Mrs. Jesus Ord de Andrade, Mrs. Thomas Allison, Mrs. Mary Backman, Mrs. Matilda L. Barber, Henry A. Barclay, E. T. Barber, Thomas N. Beck, A. M. Benham, Jessie Martin Blanchard, E. H. Blood, Ira H. Bradshaw, B. B. Briggs, Philomela T. Bunell, Frederick H. Busby, A.

W. Butler, H. A. Bond, William H. Carlson, William H. Carlson, V. E. Carson, B. F. Carter, Benjamin F. Carter, Harry Chandler, Fred Chandler, Walter S. Chaffee, J. N. Chapman, F. O. Christensen, Mrs. L. C. Chormicle, Byron O. Clark, George Claussen, Clarence T. Cleve, Nicholas Cochems, Nathan Cole, Jr., Peter Cook, I. D. Cory, Seaton T. Cull, Stefano Cuneo, J. A. Dahl, Andrew J. Darling, Thomas A. Delano, Richard Dillon, John Ditter, David Dolbeen, John F. Duehren, James F. Dunsmoor, Edward Durant, Robert Dunn, Henry Elms, Fairmont Land and Water Company, Farming and Fruit Land Company, George W. F. Fentrees, S. W. Ferguson, William Ferguson, William Freeman, Joseph W. Furnival, J. Garber, F. C. Garbutt, J. Drew Gay, F. A. Geier, Ambrose F. George, Will D. Gould, Mrs. Mary L. Gould, Thomas E. Gould, James Greton, W. F. Grosser, D. J. Haines, Herman Haines, James M. Hait, Simeon Hamberg, Jacob Harpe, Alice A. Hall, Calvin Hartwell, William T. Hamilton, William T. Hamilton, James Hamilton, Peter Hamilton, John C. Haskell, John C. Hay, Mary Jackson Hall, Julius Heyman, J. M. Hill, John D. Hoffman, August Hoelling, J. F. Holbrook, W. R. Hughes, George A. Hunter, J. F. Houghton, E. J. Ismert, W. W. Jenkins, Thomas J. Johannsen, M. D. Johnson, John J. Jones, A. S. Joseph, John Kenealey, Frederick Kenworthy, Richard Kichline, Joseph Kurtz, Charles Kutschmar, Mrs. Ammoretta J. Lenterman, T. B. Lawhead, L. B. Lawson, Lawson M. La Fetra, Stephen L. Leighton, Miguel Leonis, George Loomis, George Loomis, Marion C. Loop, Pablo Lopez, Daniel Luce, G. W. Mack, John B. Martin, Cora L. Mathiasen, Ezra May, Angus S.

McDonald, A. M. Melrose, Mrs. Flossy Melrose, W. E. McVay, Thomas Mensies, J. G. Miller, John Million, Mrs. Mamie O. Million, H. H. Mize, Thomas F. Mitchell, W. H. Mosely, L. E. Mosher, Joseph Mullally, Andrew Myers, D. C. Newcomb, Albert E. Nettleton, North Pasadena Land and Water Company, James O'Reilly, George L. Ott, Pacific Coast Oil Company, J. H. Painter, M. D. Painter, Mrs. Annie Palen, J. R. Pallett, W. A. Pallett, T. A. Pallett, C. O. Parsons, F. W. Pattee, James Peirano, John J. Peckham, Ramon Perea, Daniel Phelan, Edward E. Perley, McH. Pierce, William Piseh, R. M. Pogson, A. W. Potts, Lafayette S. Porter, A. J. Praster, F. H. Prescott, Lewis H. Price, Charles Raggis, W. B. Ralphs, James B. Randol, C. P. Randolph, F. M. Randolph, Francisco Real, George H. Reed, John Rea, Otto Rinderknecht, Felipe Rivera, James Robertson, George D. Rowan, S. D. Savage, Jacob Scherer, George W. Seifert, Luciano Sequois, Henry C. Shearman, Henrietta Shirpser, Rebecca Jetta Shirpser, David Shirpser, Max Shirpser, Giabatista Sinaco, J. S. Slauson, J. Wallen Smith, Mrs. Maggie Smith, E. Sommer, W. A. Spencer, H. C. Stevenson, H. J. Stevenson, M. W. Stimson, Robert Strathearn, R. P. Strathearn, Eleanor Sussman, D. M. Sutherland, John Sweeney, W. H. Teggart, James P. Taylor, Mary G. Tongier, James R. Townsend, Mrs. C. L. True, L. Tunison, J. S. Turner, George S. Umpleby, F. Veysset, George Vilas, Alden R. Vining, Daniel A. Wagner, S. A. Waldron, W. W. Wallace, C. H. Watts, Mrs. Julia J. Wheeler, A. C. Whitaere, M. L. Wicks, Moye Wicks, Mrs. Jennie L. Wicks, Mary C. Williams, C. N. Wilson, Robert N. C. Wilson, J_z Youngblood.

You are Hereby Commanded, That you be and appear in said Circuit Court of the United States aforesaid, at the Court-room in Los Angeles, on the second day of November, A. D. 1891, to answer an Amended Bill of Complaint exhibited against you in said Court by the United States of America; and to do and receive what the said Court shall have considered in that behalf. And this you are not to omit, under the penalty of Five Thousand Dollars.

WITNESS, the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, this 28th day of September, in the year of our Lord one thousand eight hundred and ninety-one, and of our Independence the one hundred and sixteenth.

(Seal)

W.M. M. VAN DYKE,

Clerk.

At a stated term, to-wit, the August term, A. D. 1891, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, held at the Court Room in the city of Los Angeles, on Monday, the twenty-sixth day of October, in the year of our Lord one thousand eight hundred and ninety-one.

Present—The Honorable ERSKINE M. Ross, District Judge.

UNITED STATES OF AMERICA,

Complainants,

vs.

THE SOUTHERN PACIFIC RAILROAD

COMPANY, ET AL.,

Defendants.

No. 184.

On this 26th day of October, 1891, in open Court, upon application of Joseph H. Call, Esq., Special As-

sistant United States Attorney, and good cause appearing therefor, it is ordered that John Robarts and George L. Mesnager, executors of the last will and testament of defendant Miguel Leonis, deceased, be substituted in lieu of said defendant, Miguel Leonis, and that complainants be permitted to file an amendment to the amended bill herein, substituting said executors, John Robarts and George L. Mesnager in lieu of said Miguel Leonis, deceased.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States, for the Southern District of California, do hereby certify the foregoing to be a full, true and correct copy of an original order made and entered by said Court October 26th, 1891, in the cause entitled The United States of America, Complainants vs. The Southern Pacific Railroad Company, et al., Defendants, No. 184, and now remaining of record therein.

Attest my hand and the seal of said Circuit Court, this 19th day of July, A. D., 1894.

(Seal)

W.M. VAN DYKE,
Clerk.

[Endorsed:] No. 184. U. S. Circuit Court Ninth Circuit, Southern District of California. The United States of America, vs. The Southern Pacific Railroad Company, et al. Certified copy of Order Substituting Parties Deft. Filed July 19, 1894. Wm. M. Van Dyke, Clerk.

In the United States Circuit Court, Southern District of California.

UNITED STATES OF AMERICA,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY, ET AL. } No. 184.

The complainant herein by leave of Court first had and obtained, amends its amended bill of complaint by substituting in lieu of defendant, Miguel Leonis, now deceased, John Robarts and G. L. Mesnager, Executors of the last will and testament of said Miguel Leonis, deceased. And your orator prays the same relief and issuance of the same process against them as it hath already prayed against the other defendants herein by said bill.

Your orator waives answer under oath.

JOSEPH H. CALL,
Special Asst. U. S. Attorney and Counsel for
Complainant.

[Endorsed]: No. 184. In U. S. Circuit Court, Southern District of California. United States vs. Southern Pacific Railroad Co. et al. Amendment to amended bill. Served October 26, 1891, and copy hereof received, Wm. M. Van Dyke, Clerk. Filed October 26, 1891, Wm. M. Van Dyke, Clerk. Joseph H. Call, Solicitor for Complainant.

*In the Circuit Court of the United States, Ninth Circuit.
Southern District of California.*

UNITED STATES OF AMERICA,
Complainant,
vs.
SOUTHERN PACIFIC RAILROAD COM-
PANY, J. S. SLAUSON, ET AL.,
Defendants. } }

Comes now the defendant, J. S. Slauson, and answering the amended bill of complaint of said complainant herein, says: That he had not nor did he claim or pretend to have, at the time of the filing of said bill of complaint any estate, right, title or interest of in or to said premises in said bill described, or in or to any part thereof; and this defendant disclaims all right or title of, in or to the same and every part thereof.

Wherefore said defendant prays that he be hence dismissed with his reasonable costs in this behalf most wrongfully sustained.

HOUGHTON, SILENT & CAMPBELL,
Solicitors for said Deft.

[Endorsed]: No. 184. Circuit Court of U. S., Ninth Circuit, So. Dist. of Cal. United States vs. S. P. R. R. Co. Disclaimer of Deft. Slauson. Filed November 2d, 1891. Wm. M. Van Dyke, Clerk. Houghton, Silent & Campbell, Solicitors for Deft. Slauson.

*In the United States Circuit Court, Southern District
of California, Ninth Circuit.*

UNITED STATES OF AMERICA,

Complainant,

vs.

SOUTHERN PACIFIC RAILROAD COM-
PANY AND OTHERS,

Defendants,

No. 184.

**Replication of the United States to the Answer
of J. S. Stauson, Defendant.**

This repliant, saving and reserving to himself all and all manner of advantages of exception to the manifold insufficiencies of the said answer, for replication thereunto, saith that he will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by this repliant without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is, and will be, ready to aver and prove as this honorable Court shall direct, and humbly prays, as in and by his said bill he hath already prayed.

JOSEPH H. CALL,

Special Ass't U. S. Att'y and of Counsel for
Complainant.

[Endorsed]: No. 184. In the U. S. Circuit Court,
Southern Dist. of Cal. United States of America,

Complainant, vs. Southern Pacific Railroad Co., et. al., Defendants. Due Service hereof admitted by copy this Nov. 5, 1891. Houghton, Silent & Campbell, Solicitor for said Defendant. Filed November 5th, 1891. Wm. M. Van Dyke, Clerk. Joseph H. Call, Special Ass't U. S. Att'y.

*In the Circuit Court of the United States, Ninth Circuit
Southern District of California.*

UNITED STATES OF AMERICA, Plaintiff,
vs. Answer
to Amended Bill
No. 184.
THE SOUTHERN PACIFIC RAILROAD
COMPANY, et al. Defendants.

Comes, John Robarts and George L. Mesnager, Executors of the last will of Miguel Leonis deceased, and answering for themselves alone and not for the other defendants herein, answer the amended bill No. 184.

I.

That the said Miguel Leonis in his life time made and published his last will and testament whereby he appointed I. W. Hellman, John Robarts and George L. Mesnager defendants herein executors thereof. That on the 20th day of September 1889, at the County of Los Angeles, the said Miguel Leonis died. That on the 10th day of October 1889, at the City of Los Angeles said will was proved and admitted to probate in the Superior Court, in the County of Los

Angeles, in the State of California. That thereupon on the 10th day of October 1889, letters testamentary were issued on the said will to the defendants and I. W. Hellman, by the Superior Court of the said County. That thereupon the defendants duly qualified and entered upon the discharge of their duties as executors and that said letters testamentary have not been revoked.

That I. W. Hellman resigned his trust as such executor, which was duly accepted by the Court on the 5th day of May, 1890, leaving John Robarts and George L. Mesnager as the remaining executors of the said estate whoever since have been and now are the executors thereof.

II.

And further answering herein, defendants deny, generally and specifically each and every allegation in the said bill of complaint contained.

III.

And for a further distinct and separate answer to the bill of the complainant herein, defendants allege:

That by the Act of Congress, approved July 27th, 1886, entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast, Congress incorporated the Atlantic and Pacific Railroad Company and granted to said company in aid of the construction of such railroad, a large amount of lands in the State of California and other States and Territories and to the whole of which Act the defendants refer. See U. S. Statutes, Vol. 15, page 292.

Section 3 of said Act, provides as follows:

"That there be and hereby is granted to the Atlantic and Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific Coast, and to secure the safe and speedy transportation of mails, troops, munitions of war and public stores, over the route of said line of railway and its branches, every alternate section of public land not mineral designated by odd numbers to the amount of twenty alternate sections per mile on each side of said railroad line, as said company may adopt through the territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever on the line thereof, the United States have full title, not reserved, sold, granted or otherwise appropriated and free from pre-emption or other claims, or rights, at the time the line of said railroad is designated by a plat thereof filed in the office of the Commissioner of the General Land Office, and whenever prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof under the direction of the Secretary of the Interior, in alternate sections and designated by odd numbers not more than ten miles beyond the limits of said alternate sections, and not including the reserve numbers; provided, that if said route shall be found upon the line of any other railroad route to aid in the construction of which lands have been heretofore granted by the United States, as

far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this Act."

And Section 18 of said Act provides as follows:

"See. 18. That the Southern Pacific Railroad, a company incorporated under the laws of the State of California, is hereby authorized to connect with the said Atlantic and Pacific Railroad, formed under this Act, at such point near the boundary line of the State of California as they shall deem most suitable for a railroad line to San Francisco and shall have a uniform gauge and rate of freight or fare with, said road, and in consideration thereof, to aid in its construction, and in consideration thereof, shall have similar grants of land subject to all the conditions and limitations herein provided, and shall be required to construct its road on the like regulations as to time and manner with the Atlantic and Pacific Railroad herein provided for."

IV.

Defendants further show to the Court, that by Section 23 of an Act of Congress approved March 3d, 1871 (U. S. Statutes, Vol. 16, page 573) entitled an Act to incorporate the Texas and Pacific Railroad Company and to aid in the construction of its road and for other purposes, it was provided as follows :

"That for the purpose of connecting the Texas and Pacific Railroad with the City of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near

Tehachapi Pass, by way of Los Angeles to the Texas and Pacific Railroad at or near the Colorado River with the same rights, grants, and privileges, and subject to the same limitations, restrictions and conditions, as were granted to the said Southern Pacific Railroad Company of California, by the Act of July 27th, 1866.

"Provided, however, that this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company or any other railroad company."

V.

Defendants further allege, that the Southern Pacific Railroad Company, in pursuance of the acts of Congress herein set forth and all acts amendatory, supplementary, or in addition thereto, bearing upon the same subject as far as duties are imposed, privileges extended, or obligations required of the said company, were each and all duly and legally accepted by said The Southern Pacific Railroad Company, and that all acts, obligations, requirements and duties, required by said Acts of Congress to be done and performed by the Southern Pacific Railroad Company for the construction and completion (subject to the laws of the State of California) of a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles to the Texas and Pacific Railroad, at or near the Colorado river, were duly and legally performed, in each and all and every respect as required by law, and that said railroad has been duly and legally accepted by the United States of America, by reason whereof The

Southern Pacific Railroad Company were and are legally entitled to the lands set forth in the bill of the plaintiff.

The defendants further answering herein allege, that in pursuance of the several acts of Congress hereinbefore set forth, and all other acts of Congress bearing on the same subject the United States of America duly and legally conveyed to the "The Southern Pacific Railroad Company" by letters patent on or about the 9th day of January, 1885, the following described lands, to-wit:

County of Los Angeles, and State of California, to-wit: The southwest quarter (S. W. $\frac{1}{4}$), south half of southeast quarter (S. $\frac{1}{2}$ of S. E. $\frac{1}{4}$) of Section twenty-nine (29), all of thirty-one (31), in Township six (6) north of Range twelve (12) West, all of fractional seven (frac'l 7) northwest quarter (N. W. $\frac{1}{4}$), west half of southwest quarter (W. $\frac{1}{2}$ of S. W. $\frac{1}{4}$), east half of southeast quarter (E. $\frac{1}{2}$ of S. E. $\frac{1}{4}$) of seventeen (17), south half (S. $\frac{1}{2}$) of fifteen (15), all of twenty-one (21), twenty-three (23) and twenty-five (25) in Township six (6) north of range thirteen (13) west all of one (1) northeast quarter (N. E. $\frac{1}{4}$) of eleven (11) and north half (N. $\frac{1}{2}$) of Section No. thirteen (13) in Township six (6) north of Range fourteen (14) West, San Bernardino Base and Meridian.

VII.

Defendants further allege that Miguel Leonis, deceased, in his life time, and on or about the 24th day of March, 1885, purchased in good faith and for a valuable consideration, from the Southern Pacific Rail-

road Company, the lands described in the preceding paragraph and received from said Southern Pacific Railroad Company a conveyance of said lands, which said conveyance is in the words and figures following, to-wit:

DEED No. 2931.

To all to whom these presents shall come:

The Southern Pacific Railroad Company, a corporation duly incorporated and organized under the laws of the State of California, and D. O. Mills and Gerritt L. Lansing, Trustees of all the lands of the said Southern Pacific Railroad Company, lying in the State of California, which remained unsold on the first day of April, A. D., 1875, send greeting:

WHEREAS, On the first day of April, A. D., 1875, the said Southern Pacific Railroad Company conveyed all its lands lying in the State of California, then unsold, of which the lands hereinafter described were and are a part, to D. O. Mills and Lloyd Tevis, to hold in TRUST as security for the payment of forty-eight thousand bonds, forty-four thousand thereof for the sum of one thousand dollars each, and four thousand thereof for the sum of five hundred dollars each, issued and to be issued by said Southern Pacific Railroad Company in seven series, to be designated by the letters of the alphabet, commencing with the letter A, and followed by the succeeding letters in regular order to and including the letter G. Series A to consist of thirteen thousand bonds for one thousand dollars each, numbered from one to thirteen thousand, both inclusive, and four thousand bonds for five hundred dollars each, numbered from thirteen thousand and

one to seventeen thousand, both inclusive. Series B to F, both inclusive, to consist of five thousand bonds each, for one thousand dollars each, numbered from seventeen thousand and one to forty-two thousand, both inclusive. Series G to consist of six thousand bonds for one thousand dollars each, numbered from forty-two thousand and one to forty-eight thousand, both inclusive; all of said bonds payable thirty years after date, with interest at the rate of 6 per centum per annum, payable semi-annually, said Series A to bear date April first, eighteen hundred and seventy-five, and the said several succeeding series to bear such dates respectively as the Board of Directors of said Southern Pacific Railroad Company may direct; all of said bonds aggregating the sum of forty-six millions of dollars;

AND WHEREAS, said deed of trust, among other matters, provided that the said Southern Pacific Railroad Company should have the sole and exclusive control and management of said lands, with full power to make sales of the same upon such terms and conditions as might, from time to time, be agreed upon between the said railroad company and the said trustees; and that when such sales had been made, and the purchase money fully paid, the said company and the said trustees should unite in a conveyance in fee simple of the lands so sold to the purchaser or purchasers thereof, which conveyance should absolutely and forever release the lands so conveyed from any and all lien or incumbrance for or on account of said bonds, or any other debt or obligation of the said railroad company.

AND WHEREAS, on the 24th day of March, 1883, Lloyd Tevis, one of the trustees, did resign his trust under said conveyance of the first of April, 1875; and whereas, on the 3d day of April, 1883, the said D. O. Mills, the remaining trustee under said conveyance, did, pursuant to the terms of his trust, nominate Gerrit L. Lansing, of the city of San Francisco and State of California, to fill the vacaney caused by the resignation of said Lloyd Tevis.

AND WHEREAS, on the 17th day of April, 1883, the Board of Directors of the said Southern Pacific Railroad Company, pursuant to the terms of said trust, did ratify and approve said nomination, and did appoint said Gerrit L. Lansing to fill said vacaney; and whereas, on the 18th day of April, 1883, the said Gerrit L. Lansing did formally accept the position of Trustee under said Deed of Trust;

AND WHEREAS, said Deed of Trust further provided, that for the sake of convenience in making said conveyances, the said Trustees should have power to act by attorney, duly nominated and appointed by them jointly by letter of attorney, which should be duly acknowledged and recorded in each and all the counties in which said lands, or any part thereof are situated, and that all deeds made in their names by such attorney should have the same force and effect as if by them in person:

AND WHEREAS, on the 21st day of April, 1883, said Trustees, D. O. Mills and Gerrit L. Lansing, acting under the power so vested in them, did nominate, constitute and appoint by letters of attorney, duly acknowledged and recorded as aforesaid, Jerome Mad-

den of the City and County of San Francisco and State of California, their true and lawful attorney, in their names, place and stead, to make, execute and deliver all conveyances required of them, as aforesaid;

AND WHEREAS, the said railroad company has sold the lands hereinafter described, pursuant to the foregoing conditions, to Miguel Leonis of the county of Los Angeles in the State of California for the sum of Thirteen Thousand and Two 13-100 (\$13,002.13) Dollars, which sum has been by him fully paid to the said D. O. Mills and Gerrit L. Lansing, Trustees, as aforesaid;

NOW THEREFORE, In consideration of the premises and the said sum of Thirteen Thousand Two 13-100 (\$13,002.13) Dollars, the receipt whereof is hereby acknowledged, the said Southern Pacific Railroad Company, and the said D. O. Mills and Gerrit L. Lansing, Trustees as aforesaid, do grant, bargain, sell and convey to the said Miguel Leonis and to his heirs and assigns, the following described tracts of land, situated, lying and being in the County of Los Angeles, and State of California, to-wit:

The southwest quarter (S. W. $\frac{1}{4}$) south half of southeast quarter (S. $\frac{1}{2}$ of S. E. $\frac{1}{4}$) of Section twenty-nine (29) all of thirty-one (31) in Township six (6) north of Range twelve (12) west, all of fractional seven (frac'l 7) northwest quarter (N. W. $\frac{1}{4}$) west half of southwest quarter (W. $\frac{1}{2}$ of S. W. $\frac{1}{4}$) east half of southeast quarter (E. $\frac{1}{2}$ of S. E. $\frac{1}{4}$) of seventeen (17) south half (S. $\frac{1}{2}$) of fifteen (15) all of twenty-one (21) twenty-three (23) and twenty-five (25) in Township

six (6) north Range thirteen (13) west, all of one (1) northeast quarter (N. E. $\frac{1}{4}$) of eleven (11) and north half (N. $\frac{1}{2}$) of Section No. thirteen (13) in Township six (6) north of Range fourteen (14) west San Bernardino Base and Meridian, containing Fifty-two Hundred .83 (5200.83) acres, according to the United States Surveys, together with all the privileges and appurtenances thereunto appertaining and belonging, reserving all claim of the United States to the same as mineral land.

TO HAVE AND TO HOLD the aforesaid premises, to the said Miguel Leonis, his heirs and assigns, to his and their use and behoof forever.

IN TESTIMONY WHEREOF, the said Southern Pacific Railroad Company has caused these presents to be signed by its Vice-President and Secretary, and sealed with its Corporate Seal, and the said D. O. Mills and Gerrit M. Lansing, Trustees, by their said attorney, Jerome Madden, have subscribed their names and affixed their seals, this twenty-fourth day of March, A. D. 1885.

CHAS. F. CROCKER,

(Seal.)

Vice-President S. P. R. R. Co.

J. L. WILLCUTT,

Secretary S. P. R. R. Co.

D. O. MILLS. (Seal.) } Trustees.
GERRIT L. LANSING. (Seal.) }

By JEROME MADDEN,
Their Joint Attorney in Fact.

STATE OF CALIFORNIA,

City and County of San Francisco, } ss.

On this twenty-fourth (24) day of March, in the year One thousand eight hundred and eighty-five (1885), before me, Charles J. Torbert, a Notary Public in and for said City and County of San Francisco, State of California, personally appeared Charles F. Crocker, known to me to be the Vice-President, and J. L. Willcutt, known to me to be the Secretary, of the Corporation that executed the within instrument; and each of them acknowledged to me that such Corporation executed the same; also, on this, the day aforesaid, before me, the Notary Public aforesaid, personally appeared Jerome Madden, known to me to be the person whose name is subscribed to the within instrument, as the Attorney-in-fact of D. O. Mills and Gerrit L. Lansing, and acknowledged to me that he subscribed the names of the said D. O. Mills and Gerrit L. Lansing thereto as principals, and his own name as Attorney-in-fact.

In WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in
(SEAL) the City and County of San Francisco, State of California, on the day and year above written.

CHARLES J. TORBERT,
Notary Public in and for the City and County
of San Francisco, and State of California.

The following is endorsed upon the back of the foregoing deed:

Deed No. 2931. Southern Pacific Railroad Co.,
D. O. Mills and Gerrit L. Lansing Trustees. To Miguel
Leonis.

Deed. Dated, March 24th, 1885. Recorded at request of grantee April 7, 1885, at 40 minutes past 10 a. m., in book 136 of Deeds, page 471, Records Los Angeles County. Chas. E. Miles, County Recorder. By W. B. Pritchard, Deputy 14. 3.50 pd.

Defendants further answering herein, allege:

That Miguel Leonis in his lifetime and on or about the 24th day of March, 1885, became and was a bona fide purchaser for value of the lands described in the conveyance, set forth in the preceding paragraph, from the Southern Pacific Railroad Company.

Wherefore and by reason of the premises aforesaid, the defendants pray this Honorable Court, that the title of the estate of the said Miguel Leonis in and to the lands described in this answer be protected by decree of this Honorable Court and that the said Miguel Leonis in his lifetime was a bona fide purchaser for value from the Southern Pacific Railroad Company and that the title to the lands set forth in this answer be quieted against all the pretended claims of the complainant that the defendants recover their costs.

S. M. WHITE (per J. R.),
JAMES S. ROBINSON,

Attorneys for Defendants Robarts and Mesnager.

[Endorsed]: No. 184. In the Circuit Court, Ninth Circuit, Southern District of California. United States of America, Plaintiffs, vs. The Southern Pacific Railroad Company, et al., Defendants. Answer to Amended Bill No. 184. Service of the within answer is hereby admitted this 18th day of February, 1892. Jos. H. Call, Attorney for Plaintiff. S. M.

White and J. S. Robinson, No. 138½ North Spring street, Los Angeles, Cal., Attorneys for Defendants Roberts and Mesnager. Filed, February 18th, 1892.
Wm. M. Van Dyke, Clerk.

In the United States Circuit Court, Southern District of California, Ninth Circuit.

UNITED STATES OF AMERICA,
Complainant,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY AND OTHERS,
Defendants.

No. 184.

**Replication of the United States to the Answer of
John Robarts and George L. Mesnager,
Executors of last Will of Miguel
Leonis, Defendant.**

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for the replication thereunto, saith that he will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by this repliant without this that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed and denied, is true; all which matters and things this repliant is, and will be, ready to aver and prove as this

honorable Court shall direct, and humbly prays, as in
and by his said bill he hath already prayed.

JOSEPH H. CALL,
Special Ass't U. S. Att'y and of Counsel for
Complainant.

[Endorsed]: No. 184. In the U. S. Circuit Court
Southern Dist. of Cal. United States of America,
Complainant, vs. Southern Pacific Railroad Co. et al.,
Defendant. Due Service hereof admitted by copy
this 18 Feby. 1892. Jas. S. Robinson, by Rufe solicitor
for said Defendant. Joseph H. Call, special Ass't
U. S. Att'y. Filed February 18th, 1892, Wm. M. Van
Dyke, Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
Southern District of California.*

UNITED STATES OF AMERICA,
Complainant, }
vs. } No. 184.
SOUTHERN PACIFIC RAILROAD COMPANY, JAMES R. TOWNSEND, ET AL., }
Respondents.

Answer of Respondents A. W. Potts and J. F. Holbrook.

The answer of respondents A. W. Potts and J. F. Holbrook to the Bill of Complaint of the United States of America, and amendments thereto, shows:

I.

These respondents have no knowledge, information or belief as to any of the matters and things set forth in said Bill of Complaint, except as shown herein.

II.

These respondents admit and allege that on the 3d day of March, 1871, the United States, by an Act of Congress, approved on that day, granted to the said Southern Pacific Railroad Company every alternate section of public land, designated by odd numbers, to the amount of ten alternate sections on each side of the contemplated line of railroad from Tehachapi Pass via Los Angeles to the Colorado River.

And these respondents admit and allege, that on April 3d, 1871, said railroad company filed in the general Land Office a plat designating said line of road, which was approved by the United States, and thereafter within the time and in the manner, and in all respects as required by said Act of Congress, did construct and complete a railroad and telegraph line between said points;

And the following described lands, among other lands, fell within the twenty-mile limits of such grant; and on April 3d, 1871, as these respondents are informed and believe, said lands were public lands of the United States, and embraced within such grant, being described as follows, to-wit: situate, lying and being in the County of Los Angeles, and State of California, and being the west half (W. $\frac{1}{2}$) of the northwest quarter (N. W. $\frac{1}{4}$) of Section No. seventeen (17), in Township two (2) north of Range thirteen (13),

West, San Bernardino Base and Meridian, containing eighty acres of land:

And thereafter and prior to the 26th day of July, 1892, Letters-Patent to said lands were duly issued from the United States to the said Southern Pacific Railroad Company for said lands.

III.

These respondents allege that on the 26th day of July, 1882, they purchased said land from said Southern Pacific Railroad Company, in good faith and for a valuable consideration, believing then and still believing that at the time they purchased such land, it was owned by absolute title, in fee simple, by said Southern Pacific Railroad Company; and that on said 26th day of July, 1882, the said Southern Pacific Railroad Company executed to these respondents a good and sufficient deed of conveyance of and for all the said land hereinbefore described.

IV.

These respondents allege that they own said tract of land above described, but deny that at the time of this suit, they claimed or now claims any other of the lands described in said bill of complaint; and deny that they, or either of them, at any time trespassed upon such lands, or cut or removed any wood or timber thereon.

WHEREFORE, these respondents pray that they may be hence dismissed with their reasonable costs and charges in this behalf sustained.

A. W. HUTTON,
Solicitor for Respondents, A. W. Potts and
J. F. Holbrook.

[Endorsed]: No. 184. Circuit Court of the United States, Southern District of California. United States vs. Southern Pacific Railroad Co., et al., Respondents. Answer of Respondents, A. W. Potts and J. F. Holbrook. A. W. Hutton, 88, 88 $\frac{1}{2}$ and 89 Temple Block, Los Angeles, Cal. Solicitors for Respondents, A. W. Potts and J. F. Holbrook. Filed March 2d, 1892, Wm. M. Van Dyke, Clerk.

In the United States Circuit Court, Southern District of California, Ninth Circuit.

UNITED STATES OF AMERICA,
Complainant,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY, AND OTHERS,
Defendants. } No. 184.

**Replication of the United States to the Answer
of A. W. Potts and J. F. Hol-
brook, Defendant.**

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, saith that he will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by this repliant without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be

replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this relpliant is, and will be, ready to aver and prove as this honorable court shall direct, and humbly prays, as in and by his said bill he hath already prayed.

JOSEPH H. CALL,

Special Ass't U. S. Att'y, and of Counsel for
Complainant.

[Endorsed.] No. 184. In the U. S. Circuit Court, Southern Dist. of Cal. United States of America, Complainant, vs. Southern Pacific Railroad Co., et al., Defendants. Replication. Due service hereof admitted by copy this March 3rd, 1892, A. W. Hutton, Solicitor for said Defendant. Potts & Holbrook. Filed March 4th, 1892, Wm. M. Van Dyke, Clerk. Joseph H. Call, Special Ass't U. S. Att'y.

*In the United States Circuit Court, Ninth Circuit,
Southern District of California.*

THE UNITED STATES OF AMERICA,

Complainant, }
vs. } No. 184.—Affida-
vิต of Service
by Mail of An-
swer of Will
D. Gould and
Mrs. Mary L.
Gould.

THE SOUTHERN PACIFIC RAILROAD
COMPANY, ET AL., }
Defendants.

STATE OF CALIFORNIA, } ss.
County of Los Angeles, } ss.

Samuel Peterson, being first duly sworn according to law, deposes and says: That he is a citizen of the United States, over the age of eighteen years, and is

the clerk of Gould & Stanford, the solicitors of record for defendants Will D. Gould and Mrs. Mary L. Gould in the above-entitled action; that said solicitors reside at the City of Los Angeles, in the County of Los Angeles, State of California; that Joseph D. Redding, as affiant is informed and believes, is the solicitor for the defendant in said action, The Southern Pacific Railroad Company, and resides and has his office at the City and County of San Francisco, in said State of California; that in each of said two places there is a United States Postoffice, and between said two places there is a regular communication by mail; that on the fifth day of March, 1892, affiant served a true and correct copy of the answer of said defendants, Will D. Gould and Mrs. Mary L. Gould, in said action, on said Joseph D. Redding, the said solicitor for said defendant, The Southern Pacific Railroad Company, by depositing such copy, on said date, in the post-office at said city of Los Angeles, properly inclosed in an envelope, addressed to said Joseph D. Redding, Esq., Attorney at Law, Cor. 4th and Townsend streets, San Francisco, California, said place of residence, and prepaying the postage thereon.

SAMUEL PETERSON.

Subscribed and sworn to before me, this sixth day of March, 1892.

(Seal.)

WM. M. VAN DYKE,

U. S. Commissioner & Clerk U. S. Circuit
Court Southern District of California.

[Endorsed.] No. 184, U. S. Circuit Court Southern
District of California. United States v. Southern Pa-

cific R. R. Co. et al. Affidavit of Service. Filed March 7th, 1892. Wm. M. Van Dyke, Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
Southern District of California.*

IN EQUITY.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

THE SOUTHERN PACIFIC RAILROAD
COMPANY, ET. AL.,

Respondents.

No. 184.
Answer of Will
D. Gould and
Mrs. Mary L.
Gould.

The answer of Will D. Gould and Mrs. Mary L. Gould to the bill of complaint of the United States of America and amendments thereto, shows:

I.

These respondents have no knowledge, information or belief as to any of the matters or things set forth in said bill of complaint and amendments thereto, except as shown herein.

II.

These respondents admit and allege that, on the third day of March, 1871, the United States, by an Act of Congress approved on that day, granted to the said Southern Pacific Railroad Company every alternate section of public land designated by odd numbers, to the amount of ten alternate sections on each side of the contemplated line of railroad from Tehachapi Pass, via Los Angeles, to the

Colorado River. And these respondents admit and allege that, on April 3d, 1871, said railroad company filed, in the General Land Office at Washington, D. C., a plat designating said line of road, which was approved by the United States, and thereafter, within the time and in the manner and in all respects as required by said Act of Congress, did construct and complete a railroad and telegraph line between said points;

And the following described lands, among other lands, fall within the twenty-mile limit of said grant; and on April 3d, 1871, as these respondents are informed and believe, said lands were public lands of the United States, and embraced within such grant, being situate in the county of Los Angeles, State of California, and described as follows, to wit: All of fractional Section one (1), in Township one (1) North, Range thirteen (13) West, San Bernardino Base and Meridian; all of the east half ($\frac{1}{2}$) and all of the northwest quarter ($\frac{1}{4}$) of Section twenty-five (25), in Township two (2) North, Range thirteen (13) West, San Bernardino Base and Meridian; all of the south half ($\frac{1}{2}$) and all of the northwest quarter ($\frac{1}{4}$) of Section thirty-one (31), in Township two (2) North, Range twelve (12) West, San Bernardino Base and Meridian.

And thereafter, and prior to the first day of June, 1887, letters-patent to said lands were duly issued from the United States to the Southern Pacific Railroad Company for a part of said lands, and all of said lands were, prior to said date, granted to said railroad company as aforesaid.

III.

These respondents admit and allege that they, and each of them, claim to be bona fide purchasers for value, from the said Southern Pacific Railroad Company, and its grantees, who were also purchasers in good faith, and not otherwise, of all of the land hereinbefore specifically described, and that they purchased the same in good faith and for a valuable consideration, believing then and still believing that, at the time of their purchase of such lands, they were owned by absolute title, in fee simple, by said Southern Pacific Railroad Company and its said grantees; and they further admit and allege that they claim that their rights to said lands are protected and confirmed by the act of Congress approved March 3, 1887.

IV.

These respondents allege that they own said tracts of land above described, but deny that, at the time of this suit, they, or either of them, claimed, and deny that they, or either of them, now claim any other of the lands described in said bill of complaint, and deny that they, or either of them, at any time, trespassed upon said lands, or cut or removed any wood or timber thereon or therefrom.

WHEREFORE, these respondents pray that their said claims to said land be adjudicated herein, and it be decreed by this Court that their claim of title is valid and that the same is protected and confirmed by the Act of Congress approved March 3, 1887, and that they be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained;

and for such other and further relief as to this Court may seem meet and proper in the premises,

GOULD & STANFORD,
Solicitors for Respondents Will D. Gould and
Mrs. Mary L. Gould.

[Endorsed]: No. 184. United States Circuit Court, Ninth Circuit, Southern District of California. The United States of America, Complainant, vs. The Southern Pacific Railroad Company, et al., Respondents. Answer of Will D. Gould and Mrs. Mary L. Gould. Due service and receipt of a copy of within answer admitted this fourth day of March, 1892. Joseph H. Call, Solicitor for Compl. Gould & Stanford, Solicitors for Respondents, Will D. Gould and Mrs. Mary L. Gould. Filed, March 4th, 1892. Wm. M. Van Dyke, Clerk.

In the United States Circuit Court, Southern District of California, Ninth Circuit.

UNITED STATES OF AMERICA, Complainant, vs. SOUTHERN PACIFIC RAILROAD COMPANY AND OTHERS,	} No. 184.
Defendants.	

**Replication of the United States to the Answer of
Will D. Gould and Mrs. Mary L.
Gould, Defendant.**

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication

thereunto, saith that he will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by this repliant without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is, and will be, ready to aver and prove as this honorable Court shall direct, and humbly prays, as in and by his said bill he hath already prayed.

JOSEPH H. CALL,

Special Ass't U. S. Att'y, and of Counsel for
Complainant.

[Endorsed]: No. 184. In the U. S. Circuit Court,
Southern Dist. of Cal. United States of America,
Complainant, vs. Southern Pacific Railroad Co. et al.,
Defendants. Replication to answer of Will D. Gould,
et. al. Due service hereof admitted by copy this 4th
March, 1892. Gould & Stanford, solicitor for said Defendant.
Joseph H. Call, special Ass't U. S. Att'y.
Filed March 5th, 1892, Wm. M. Van Dyke, Clerk.

*In the Circuit Court of the United States of America,
Ninth District, California.*

THE UNITED STATES OF AMERICA,

Plaintiff, }
vs. } No. 184.
et al.,

SOUTHERN PACIFIC RAILROAD CO. }
Answer of Re-
et al., } spondents.
Respondents.

The answer by respondents Thomas J. Johannsen, S. A. Waldron, Thomas Menzies, Sr., W. R. Hughes, Nicholas Cochems, Jacob Scherer, F. A. Geir, Carl A. Heesch, J. F. Duehren, Julius Abrahamson, Hugo Abrahamson, Max Shirpser, Henrietta Shirpser, Rebecca Jeta Shirpser, Jacob Harp, Pablo Lopez, Mrs. Jesus Ord de Andrada, Fairmont Land and Water Co., L. E. Mosher, A. W. Butler, Farming and Fruit Land Co., C. N. Wilson and S. P. Cushman to the Bill of Complaint of the United States of America and amendments thereto shows: That respondents have no information, knowledge or belief as to any of the matters and things set out in said Bill of Complaint except as shown herein.

II.

These respondents admit and allege that on the 3rd day of March, 1871, the United States, by an Act of Congress, approved on that day, granted to the said Southern Pacific Railroad Co. every alternate section of public land designated by odd numbers, to the amount of ten alternate sections on

each side of the contemplated line of railroad from Tehachapi Pass by way of Los Angeles to the Colorado river. And these respondents admit and allege that on April 3, 1871, said Railroad Company filed in the General Land Office at Washington, D. C., a plat designating the said line of road, which was approved by the United States; and that said Southern Pacific Railroad Company thereafter, and within the time and in the manner and in all respects as required by said act of Congress, did duly construct and complete a railroad and telegraph line between the said points heretofore mentioned, to-wit: from Tehachapi Pass by the way of Los Angeles to the Colorado river.

That the following described lands together with other lands fell within the twenty-mile limits of said grant. That on the 3d day of April, 1871, said lands were public lands belonging to the United States of America, and within the limits of the aforesaid grant, and described as follows, to-wit, lying and being in the counties of Los Angeles and Kern, in the State of California:

Thomas Johannsen—East $\frac{1}{2}$ Section 15, Township 7 North, Range 14 West.

S. A. Waldron—West $\frac{1}{2}$ Section 15, Township 7 North, Range 14 West; Section 35, Township 7 North, Range 14 West; Section 15, Township 8 North, Range 14 West.

Thomas Menzies, Sen.—Section 7, Township 7 North, Range 13 West; east $\frac{1}{2}$ Section 3, Township 7 North, Range 14 West.

W. R. Hughes—Section 11, Township 7 North, Range 14 West; Section 1, Township 7 North, Range 14 West.

Nicholas Cochems—Section 25, Township 7 North, Range 14 West; Section 33, Township 8 North, Range 14 West.

Jacob Scherer—Section 11, Township 6 North, Range 13 West.

F. A. Geir—Section 27, Township 7 North, Range 14 West.

Carl A. Heesch—West $\frac{1}{2}$ Section 31, Township 7 North, Range 13 West.

J. F. Duehren—Northeast $\frac{1}{4}$ Section 35, Township 5 North, Range 13 West.

Julius Abrahamson, Hugo Abrahamson and Max Shirpser—North $\frac{1}{2}$ of Southeast $\frac{1}{4}$ and North $\frac{1}{2}$ of Southwest $\frac{1}{4}$ Section 3, Township 5 North, Range 12 West.

Henrietta Shirpser and Rebecca Jetta Shirpser—Lots 1 and 2, Northeast $\frac{1}{4}$ Section 3, Township 5 North, Range 12 West, and Lots 1 and 2, Northwest $\frac{1}{4}$ Section 37, Township 5 North, Range 12 West.

Jacob Harp—Fractional southwest $\frac{1}{4}$ Section 21, Township 3 North, Range 15 West.

Pollo Lopez—Lots 1, 2, 5 and 6, Section 1, Township 2 North, Range 15 West.

Mrs. Jesus Ord de Andreda—Section.....
Township..... Range.....

Fairmont Land and Water Co.—Section 5, Township 7 North, Range 14 West; Section 7, Township 7 North, Range 14 West; Section 3, Township 7 North, Range 15 West; Section 1, Township 7 North, Range 15 West; Section 5, Township 7 North, Range 15 West; Section 36, Township 8 North, Range 15 West; Section 13, Township 7 North, Range 15 West.

L. E. Mosher—Section 35, Township 5 North, Range 16 West.

A. W. Butler—Section 32, Township 7 North, Range 13 West.

Farming and Fruit Land Co—Section 21, Township 7 North, Range 14 West; Section 17, Township 7 North, Range 14 West; Section 9, Township 7 North, Range 14 West; Section 29, Township 9 North, Range 14 West; north $\frac{1}{2}$ Section 27, Township 9 North, Range 14 West; Section 3, Township 8 North, Range 15 West; Section 23, Township 8 North, Range 15 West; north $\frac{1}{2}$ Section 17, Township 9 North, Range 15 West; Section 19, Township 8 North, Range 15 West; Section 29, Township 9 North, Range 15 West; Section 1, Township 8 North, Range 16 West; north $\frac{1}{2}$ Section 3, Township 8 North, Range 16 West; Section 5, Township 8 North, Range 15 West; Section 7, Township 8 North, Range 15 West; Section 11, Township 8 North, Range 16 West; Section 13, Township 8 North, Range 16 West; Section 13, south $\frac{1}{2}$ Section 23, Township 8 North, Range 16 West; Township 9 North, Range 16 West; Section 19, Township 9 North, Range 16 West; Section 21, Township 9 North, Range 16 West; Section 25, Township 9 North, Range 16 West; Section 27, Township 9 North, Range 16 West; west $\frac{1}{2}$ Section 28, Township 9 North, Range 16 West; west $\frac{1}{2}$ Section 31, Township 9 North, Range 16 West; Section 33, Township 9 North, Range 16 West; Section 35, Township 9 North, Range 16 West.

C. N. Wilson—Section 17, Township 4 North, Range 15 West; north $\frac{1}{2}$ and fractional southeast $\frac{1}{4}$ Section 21, Township 3 North, Range 13 West.

S. P. Cushman—Northeast $\frac{1}{4}$ Section 2, Township 8
North, Range 16 West.

And that prior to the commencement of this action Letters Patent have been issued to the Southern Pacific Railroad Co., by the United States of America, as these respondents are informed and believe, and therefore allege.

III.

These respondents allege that since the filing of the plat designating said line of road in the General Land Office at Washington, D. C., these respondents purchased from the said Southern Pacific Railroad Company, for a valuable consideration, the several parcels of land last described herein. That at the time and times of said purchases they were informed and believed that the said Southern Pacific Railroad Company was in possession of and the actual owner in fee, with good and sufficient title to all of the said last described lands, and that they purchased the same in good faith from the said Railroad Company—the said Railroad Company having duly sold and contracted to sell in several allotments the lands last described herein to the several defendants as herein set forth, by good and sufficient agreements and conveyances for all of said hereinbefore described lands.

IV.

These respondents allege that they are in possession and own said tracts of land hereinbefore described, and deny that they claim now or ever did claim any other of the lands described in said complaint; and deny that they or either of them have trespassed, com-

mitted waste, or removed any wood or timber from said lands unlawfully.

WHEREFORE, these respondents pray that they may be hence dismissed with their reasonable costs and charges sustained in this case.

C. N. WILSON,
Solicitor for Respondents.

[Endorsed]: No. 184. In the Circuit Court of the United States of America, Ninth District, California. The United States of America, Plaintiff, vs. The Southern Pacific Railroad Company et al., Defendants. Answer by Respondents Thomas Johannsen, S. A. Waldron et al. Received copy of within this 5th day of March, 1892. Jos. H. Call, Spl. Asst. U. S. Atty. C. N. Wilson, Atty. for Respondents. Filed March 5th, 1892. Wm. M. Van Dyke, Clerk.

In the United States Circuit Court, Southern District of California, Ninth Circuit.

UNITED STATES OF AMERICA, Complainant, vs. SOUTHERN PACIFIC RAILROAD COMPANY, AND OTHERS,	} No. 184.
Defendants.	

**Replication of the United States to the Answer of
Thomas J. Johannsen, et. al., Defendants.**

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication

thereunto, saith that he will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by this repliant without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is, and will be, ready to aver and prove as this Honorable Court shall direct, and humbly prays, as in and by his said bill he hath already prayed.

JOSEPH H. CALL,

Special Ass't U. S. Att'y, and of Counsel for
Complainant.

[Endorsed]: No. 184. In the U. S. Circuit Court,
Southern Dist. of Cal. United States of America,
Complainant vs. Southern Pacific Railroad Co. et al.,
Defendants. Due service hereof admitted by copy
this.....189..... C. N. Wilson,
Solicitor for said Defendants. Joseph H. Call, Special
Ass't U. S. Att'y. Filed March 5th, 1892. Wm. M.
Van Dyke, Clerk.

In the United States Circuit Court, Southern District of California, Ninth Circuit.

UNITED STATES OF AMERICA,
Complainant
vs.
SOUTHERN PACIFIC RAILROAD COMPANY AND OTHERS,
Defendants. } No. 184.

**Replication of the United States to the Answer
of Southern Pacific Railroad Company
and Others, Defendants.**

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencieies of the said answer, for replication thereunto, saith that he will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by this repliant without this, that any other matter or things whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoide, traversed or denied, is true; all which matters and things this repliant is and will be, ready to aver and prove as this Honorable Court shall direct, and humbly prays, as in and by his said bill he hath already prayed.

JOSEPH H. CALL,
Special Assistant United States Attorney and
of Counsel for Complainant.

[Endorsed]: No. 184. In the United States Circuit Court, Southern District of California. United States of America, Complainant, vs. Southern Pacific Rail-

road Company et al., Defendants. Joseph H. Call,
Special Ass't U. S. Att'y. Filed, August 2d, 1892.
Wm. M. Van Dyke, Clerk.

In the United States Circuit Court, Southern District of California, Ninth Circuit.

UNITED STATES OF AMERICA,

vs. Plaintiff,

THE SOUTHERN PACIFIC RAILROAD
COMPANY, et al.

Defendants.

The complainant herein moves the Court for an order granting unto the complainant a writ of injunction, issuing out of and under the seal of this Honorable Court, and directed to all of the defendants in the above-entitled cause, enjoining and restraining them and each of them from chopping down and from carrying away any wood, trees and timber upon the lands described in the bill of complaint herein, the property of the complainant.

This application and motion is made upon the pleadings in the above-entitled cause, and the record in the case of United States vs. Southern Pacific Railroad Company, No. 68, on the docket of said Court, and on file therein.

GEORGE J. DENIS,
U. S. Atty.

JOSEPH H. CALL,
Special Assistant United States Attorney.

[Endorsed]: No. 184. United States Circuit Court,
Southern District of California, Ninth Circuit.
United States of America, Complainant, vs. Southern
Pacific Railroad Company et al., Defendants. Motion.
J. H. Call, Spl. Asst. U. S. Atty. Filed Apr. 10, 1893.
Wm. M. Van Dyke, Clerk.

*In the Circuit Court, of the United States, Ninth Circuit,
Southern District of California.*

184.

UNITED STATES SOUTHERN P. R. R. CO. AND MANY OTHERS,	Complainant, vs. Respondents.
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In the above entitled cause it appearing that one of the Respondents namely The Atlantic and Pacific Fibre Importing and Manufacturing Co. Limited, has sold its lands involved in this cause to Jackson Alpheus Graves, and the deed of sale having been exhibited to this Court, and it appearing that said Graves is the proper party respondent instead of said Co.

Now therefore, on motion of Jos. D. Redding solicitor for all of said Respondents it is *ordered* that Jackson Alpheus Graves be entered as one of the Respondents in this cause in the place and stead of the Atlantic and Pacific Fibre Importing and Manufacturing Company (Limited), furthermore ordered that said Respondent Graves, by his solicitor Jos. D. Redding, shall have

thirty (30) days from the signing hereof in which to plead, demur or answer to the Bill of Complaint.

ROSS,

Dist. Judge.

[Endorsed]: 184. Circuit Court U. S. of A., Complainant v. S. P. R. R. Co., et als., Respondents. Order of Substitution of Certain Party Respondent. Filed Apr. 25, 1893. Wm. M. Van Dyke, Clerk.

At a stated term, to wit, the January term A. D., 1893, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, held at the Court Room in the City of Los Angeles on Wednesday the third day of May, in the year of our Lord one thousand eight hundred and ninety-three:

Present : The Honorable Erskine M. Ross, District Judge.

THE UNITED STATES OF AMERICA,
Complainants,
vs.
THE SOUTHERN PACIFIC RAILROAD
COMPANY, ET AL.,
Defendants. } No. 184.

This cause having heretofore been submitted to the Court for its consideration and decision upon complainant's motion for an order granting unto the complainant a writ of injunction, issuing out of and under the seal of this Honorable Court, and directed to all

the defendants in the above entitled cause, enjoining and restraining them and each of them from chopping down and carrying away any wood, trees and timber upon the lands described in the bill of complaint, herein, the property of the complainant, and the Court having duly considered the said motion and being fully advised in the premises, it is now on this 3rd day of May, 1893, being a day in the January term, A.D., 1893, of said Circuit Court, of the United States, for the Southern District of California, ordered that said motion for an injunction be and the same hereby is denied.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States, for the Southern District of California, do hereby certify the foregoing to be a full, true and correct copy of an original order made and entered by said Court, May 3d, 1893, in the cause entitled The United States of America, Complainants, vs. The Southern Pacific Railroad Company, et al., Defendants, No. 184, and now remaining of record therein.

Attest my hand and the seal of said Circuit Court, this 19th day of July, A.D., 1894.

(Seal)

W. M. VAN DYKE,
Clerk.

[ENDORSED]: No. 184. U. S. Circuit Court, Ninth Circuit, Southern District of California. The United States of America vs. The Southern Pacific Railroad Company, et. al. Certified copy of order denying motion of Complainants for injunction. Filed July 19, 1894, Wm. M. Van Dyke, Clerk.

At a stated term, to-wit, the January term, A. D. 1893, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, held at the Court Room in the City of Los Angeles, on Monday, the twelfth day of June, in the year of our Lord one thousand eight hundred and ninety-three:

Present: The Honorable ERSKINE M. Ross, District Judge.

THE UNITED STATES OF AMERICA,
Complainant, }
vs. } No. 184.
THE SOUTHERN PACIFIC RAILROAD
COMPANY, ET AL.,
Defendants.

Now comes George J. Denis, Esq., United States Attorney for the Southern District of California, and Joseph H. Call, Esq., Special Assistant U. S. Attorney for the Southern District of California, of counsel for complainants, and on behalf of complainants submit defendants' motion for leave to file an amended answer in the above-entitled action to the Amended Bill of Complaint, heretofore filed by complainants, and thereupon it is ordered that the amended answer of the defendants heretofore presented may be filed upon the condition that the Replication heretofore filed to the original answer shall stand as the Repli-

cation to such Amended Answer, and that all testimony and evidence heretofore taken shall not in any way be prejudiced, but shall be deemed to have been taken with the same force and effect as if said answer had not been amended.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States, for the Southern District of California, do hereby certify the foregoing to be a full, true and correct copy of an original order made and entered by said Court, June 12th, 1893, in the cause entitled The United States of America, Complainants, vs. The Southern Pacific Railroad Company et al., Defendants, No. 184, and now remaining of record therein.

Attest my hand and the seal of said Circuit Court, this 19th day of July, A. D. 1894.

(Seal)

W. M. VAN DYKE,

Clerk.

[Endorsed]: No. 184. U. S. Circuit Court, Ninth Circuit, Southern District of California. The United States of America vs. The Southern Pacific Railroad Company, et al. Certified copy of order allowing filing of amended answer. Filed July 19, 1894. Wm. M. Van Dyke, Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
Southern District of California.*

No. 184.

THE UNITED STATES OF AMERICA,
Complainant,
vs.

THE SOUTHERN PACIFIC RAILROAD
COMPANY, and D. O. Mills and
Garrit L. Lansing, Trustees, The
City Brick Company, Atlantic and
Pacific Fibre Importing and Man-
ufacturing Company, Limited;
Julius Abrahamson, Hugo Abra-
hamson, Mrs. Jesus Ord de An-
drade, Mrs. Thomas Allison, Mrs.
Mary Backman, Mrs. Matilda L.
Barber, Henry A. Barelay, E. T.
Barber, Thomas N. Beck, A. M.
Benham, Jesse Martin Blanchard,
E. H. Blood, Ira H. Bradshaw, B.
B. Briggs, Philomela T. Burrell,
Frederick H. Busby, A. W. Butler,
H. A. Bond, William H. Carlson,
V. E. Carson, B. F. Carter,
Harry Chandler, Fred. Chand-
ler, Walter S. Chaffee, J.
N. Chapman, F. O. Christensen,
Mrs. L. C. Chormicle, Byron O.
Clark, George Claussen, Clarence
T. Cleve, Nicholas Cochems, Na-
than Cole, Jr., Peter Cook, I. D.

Cory, Seaton T. Cull, Stefano Cuneo, J. A. Dahl, Andrew J. Darling, Thomas A. Delano, Richard Dillon, John Ditter, David Dolbeen, John F. Duehren, James F. Dunsmoor, Edward G. Durant, Robert Dunn, Henry Elms, Fairmount Fruit Land Company, George W. Fentrees, S. W. Ferguson, William Ferguson, William Freeman, Joseph W. Furnival, J. Garber, F. C. Garbutt, J. Drew Gay, F. A. Geier, Ambrose F. George, Will D. Gould, Mrs. Mary L. Gould, Thomas E. Gould, James Greton, W. F. Grosser, D. J. Haines, Herman Haines, James M. Hait, Simeon Hamberg, Jacob Harpe, Alice A. Hall, Calvin Hartwell, William T. Hamilton, James Hamilton, Peter Hamilton, John C. Haskell, John C. Hay, Mary Jackson Hall, Julius Heyman, J. M. Hill, John D. Hoffman, August Hoelling, J. F. Holbrook, W. R. Hughes, George A. Hunter, J. F. Houghton, E. J. Ismert, W. W. Jenkins, Thomas J. Johannsen, M. D. Johnson, John J. Jones, A. S. Joseph, John Kenealey, Frederick Kenworthy, Richard Kichline, Joseph Kurtz, Charles Kut-

schmar, Mrs. Ammoretta, J. J. Lanterman, Thomas B. Lawhead, L. B. Lawson, M. Fetra, Stephen L. Leighton, John Robarts and G. L. Mesnager, Executors of the last Will and Testament of Miguel Leonis, deceased, George Loomis, Marion C. Loop, Pablo Lopez, Daniel Luce, G. W. Mack, John B. Martin, Cora L. Mathison, Ezra May, Angus S. McDonald, A. M. Melrose, Mrs. Flossy Melrosé, W. E. McVay, Thomas Menzies, J. G. Miller, John Million, Mrs. Mamie O. Million, H. H. Mize, Thomas F. Mitchell, W. H. Mosely, L. E. Mosher, Joseph Mullally, Andrew Myers, D. C. Newcomb, Albert E. Nettleton, North Pasadena Land and Water Company, James O'Reilly, George L. Ott, Pacific Coast Oil Company, J. H. Painter, M. D. Painter, Mrs. Annie Palen, J. R. Pallett, W. A. Pallett, T. A. Pallett, C. O. Parsons, F. W. Pattee, James Peirano, John J. Peckham, Ramon Perea, Daniel Phelan, Edward E. Perley, McH. Pierce, William Pisch, R. M. Pogson, A. W. Potts, Lafayette S. Porter, A. J. Praster, F. H. Prescott, Lewis H. Price,

Charles Raggis, William B. Ralphs,
James B. Randol, C. P. Randolph, Francisco Real, George H. Reed, John Rea, Otto Rinderknecht, Felipe Rivera, James Robertson, George D. Orwan, S. D. Savage, Jacob Scherer, George W. Seifert, Luciano Sequoia, Henry C. Shearman, Henrietta Shirpser, Rebecca Jetta Shirpser, David Shirpser, Max Shirpser, Bianbarista Sinaeo, J. S. Slauson, J. Wallen Smith, Mrs. Maggie Smith, E. Sommer, W. A. Spencer, H. G. Stevenson, H. J. Stevenson, M. W. Stimson, Robert Strathearn, R. P. Strathearn, Eleanor Sussman, D. M. Sutherland, John Sweeney, W. H. Teggart, James P. Taylor, Mary G. Tongier, James R. Townsend, Mrs. C. L. True, L. Tunison, J. S. Turner, George S. Umpleby, F. Veyset, George Vilas, Alden R. Vining, Daniel A. Wanger, S. A. Waldron, W. W. Wallace, C. H. Watts, Mrs. Julia J. Wheeler, A. C. Whitacre, M. L. Wicks, Moye Wicks, Mrs. Jennie Wicks, Mary C. Williams, C. N. Wilson, R. N. C. Wilson, J. Youngblood and J. A. Graves,

Defendants.

**Supplemental and Amended Answer to
Amended Complaint.**

Now come the respondents in the above-entitled cause, and for answer to the amended bill in equity, filed herein on the 26th day of September, 1891, against them, purporting to be a bill brought by the United States, by the Attorney-General thereof, and signed by Joseph H. Call, as Special Assistant United States Attorney, and counsel for complainant, and to so much and such parts of said bill as they are advised it is material for them to make answer unto answering, say:

I.

That said respondents aver that the Southern Pacific Railroad Company, respondent herein, is a corporation, organized and existing under and by virtue of the laws of the State of California, as herein-after stated, and a citizen of said last mentioned estate.

And the said respondents admit that the lands described in said bill were acquired by the United States of America from Mexico, in or about the year 1846, and the title to said lands was confirmed to the United States by the treaty of Guadalupe Hidalgo in the year 1848. The said respondents deny that such lands or any thereof ever since such acquisition or confirmation of title thereof have been, or at the time of, or at any time since, the filing of the bill of complaint in this suit, were or have been, or that they or any of them are now, owned by the United States by title in fee simple or otherwise; they deny that the complainant during said times or at the time of or at any time since the filing of the bill of complaint in this suit

was or has been, or that it now is, in possession of said lands or any of them, and allege on the contrary that the said lands described in the said bill, long before the filing of said bill were granted by the complainant to the respondent, the Southern Pacific Railroad Company, and thereafter were and have been, for the most part, if not entirely, in its possession, or the possession of its grantees, so far as any person or party was in actual possession thereof.

II.

The said respondents admit that by an Act of Congress, approved July 27, 1866, entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," Congress incorporated the Atlantic and Pacific Railroad Company, and granted to said Company to aid in the construction of a railroad and telegraph line in said act described, a large quantity of public lands, but it avers that such grant was made on and subject to the conditions and the limitations in said act mentioned, to which said Act of Congress reference is hereby made. U. S. Stats., Vol. XIV, p. 292. The said respondents admit that Sections 3 and 18 of said Act of Congress are correctly set forth and recited in said bill; but by reason of the insufficiency of said recitals, this defendant refers to the whole of said Act of Congress.

The said respondents are uninformed as to whether the said Atlantic and Pacific Railroad Company only accepted said grant, and therefore controvert the alle-

gation on that behalf, in the bill herein contained; they admit upon information and belief that the Atlantic and Pacific Railroad Company began to construct a railroad in the State of Missouri, but they deny that it ever proceeded to or did construct any portion of any railroad in the State of California.

And the said respondents deny that said Atlantic and Pacific Railroad Company did locate on the ground or designate upon a plat or map the whole of said line of railroad, under or in accordance with said act, from Springfield, Missouri, by way of the points or places named in said act, or otherwise, to the Pacific ocean, and deny that it ever lawfully located, or adopted, or designated any part of said line in the State of California; and deny that on or about the

day of 1866, or at any other time,

said Company did file any such plat in the office of the Commissioner of the General Land Office, and deny that at that or any such time, any such designation or location of said line of railroad was approved by the Secretary of the Interior, and deny that the odd sections of public lands on each side of said road for thirty miles were withdrawn from market or reserved, and deny that the lands in suit herein or any of them fell within the twenty mile limits of any such line or were ever lawfully withdrawn from market or reserved for or for the benefit of said Atlantic and Pacific Railroad Company; and deny that the Atlantic and Pacific Railroad Company ever designated a line of railroad between the Colorado River and the Pacific Ocean by a map thereof filed in the office of the Commissioner of the General Land

Office, or made or filed a map of definite location of a route from the Colorado River to the Pacific Ocean, whether by the most practicable and eligible route or otherwise howsoever.

The said respondents aver that the said Atlantic and Pacific Railroad Company never made any actual or definite location of its railroad in California, nor constructed any part of a railroad in said State, under or according to the Act of Congress approved July 27th, 1866, or any amendments, modifications or supplements thereto, or otherwise howsoever.

The pretended location of a route by said Atlantic and Pacific Railroad Company in California never was or became an actual or a definite location, or anything else than an attempted or pretended designation of a general route for a railroad from San Francisco to the Needles, and such pretended location or designation of route was a colorable and fraudulent location or designation of an unauthorized and impracticable line. The Secretary of the Interior never undertook to accept such pretended location or designation as anything else than a designation of a general route, and no right to or interest in any public lands was or could be acquired by said railroad company by reason of any such attempted location or designation, or any act of acceptance thereof; and the decision of a Secretary of the Interior holding that such a general route was authorized by the Act of Congress, approved July 27, 1866, was in contravention of a previous decision of a prior Secretary of the Interior to the contrary effect, and subsequently thereto and prior to the institution

of this suit was reversed by the decision of a subsequent Secretary of the Interior, holding that the said Atlantic and Pacific Railroad Company was not entitled to construct or locate a line to San Francisco, which last mentioned decision still remains in full force and effect, so far as the Interior Department is concerned; and as these defendants are advised and believe, and therefore aver, the decision of a Secretary of the Interior undertaking to accept from the Atlantic and Pacific Railroad Company a designation of a route for a railroad upon the route referred to, was unauthorized and void, and in violation of the rights acquired by and vested in the Southern Pacific Railroad Company.

These respondents ask leave to refer to said decisions, and to file copies thereof herein, if deemed necessary.

Respondents admit and aver that the greater part, but not all, the lands in suit herein are situated within twenty miles of the pretended line of general route of said Atlantic and Pacific Railroad from San Francisco to the Needles, and the greater part, but not all, thereof are situated within twenty miles of the Southern Pacific Railroad, and that all thereof are within thirty miles of said Southern Pacific Railroad.

The said respondents deny that the said Atlantic and Pacific Railroad Company was authorized by said Act or any other Act of Congress to locate or construct a line of railroad from the crossing of the Colorado River to San Francisco; they are advised and believe and therefore aver that under said Act of Congress the respondent, the Southern Pacific Railroad Company,

alone was authorized to construct a line of railroad from the crossing of the Colorado River to San Francisco, and to acquire lands under said Act of Congress along and opposite said line, and that the only right which the Atlantic and Pacific Railroad Company ever acquired to construct any line of railroad in the State of California was the right to construct a road from the crossing of the Colorado River by the most practicable and eligible route to the Pacific Ocean, which route was not on the line pretended to be designated by the said Atlantic and Pacific Railroad Company, but to the southerly thereof, and through the San Gorgonio Pass to the Pacific, in the vicinity of San Pedro.

III.

The said respondents admit that by Section 23 of an Act of Congress, approved March 3, 1871, (U. S. Stat., Vol. 16, p. 573), entitled "An Act to incorporate the Texas and Pacific Railroad Company and to aid in the construction of its road and for other purposes," it was provided as follows:

"Sec. 23. That, for the purpose of connecting the Texas Pacific Railroad with the City of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California), to construct a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad, at or near the Colorado River, with the same rights, grants and privileges, and subject to same limitations, restrictions and conditions as were granted to said Southern Pacific Railroad Com-

pany of California, by the Act of July twenty-seven, eighteen hundred and sixty-six; provided, however, that this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company, or any other railroad company."

IV.

The said respondents admit that by the Act of Congress, approved July 6, 1886, entitled "An Act to forfeit the lands granted to the Atlantic and Pacific Railroad Company, to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast, and to restore the same to settlement and for other purposes," all the lands and rights to lands in California theretofore granted or conferred upon said Atlantic and Pacific Railroad Company were declared forfeited and restored to the public domain. They pray leave to refer to said Act, but they deny that the same in anywise operated to forfeit or resume or restore to the public domain any lands as against these respondents. They admit and aver that no part of said Atlantic and Pacific Railroad had at the time of the passage of said Act of 1886, or has at any time since, been constructed in the State of California.

V.

The said respondents admit that they claim ownership in themselves and their grantees of the lands described in the Bill of Complaint, and they admit that they claim the same, and aver that they acquired and became entitled to said lands under and virtue of the said Act of Congress of March 3, A. D. 1871, and the

grant to the Southern Pacific Railroad Company therein contained, and they admit that they claim, and they aver the fact to be, that the said Southern Pacific Railroad Company duly accepted the said grant and the terms and conditions thereof, and duly designated and located the route and line of its road between the points in that behalf mentioned in said Act, and within the time and manner in said Act provided in that behalf, such designation and location being made by map or plat thereof, which it filed in the office of the Commissioner of the General Land Office on the 3rd day of April, 1871, and they pray leave to refer to said map or plat when the same shall be produced in this suit. They aver that such map or plat was duly accepted by the Secretary of the Interior as designating the line of its road between the points mentioned in said Act, and in accordance with said Act of Congress, and for twenty years and over the Interior Department held, and conclusively adjudged that the grant to said Southern Pacific Railroad Company under said Act became effective and attached to the lands granted thereby and involved in this suit, on the 3rd day of April, 1871, and during all that period the transactions between the complainant and the said Southern Pacific Railroad Company, were based upon that claim by the railroad company, and its acceptance and adoption by the complainant; and the transactions between said railroad company and the other defendants in respect to lands involved in this suit were and have been based upon such action, determination and rulings of the Interior Department of the United States. And they aver that

afterwards maps and plats were filed in the office of the Commissioner of the General Land Office of its line of railroad as built from a point at or near Tehachapi Pass, by way of Los Angeles to the Colorado River, under and in pursuance of the provisions of said Act of March 3, 1871, such last mentioned maps and plats having been so filed on the following dates, viz.:

- Section 1, May 7, 1874.
- Section 2, November 13, 1875.
- Section 3, July 19, 1976.
- Section 4, February 28, 1877.
- Section 5, December 28, 1877.

They deny that the located or designated line of route of the said Southern Pacific Railroad Company, as aforesaid, lies upon the same line as the attempted or pretended line of route, or as any lawfully designated or located line of route, of the Atlantic and Pacific Railroad Company, and deny that the lands in suit herein would be or are at any place where the designated and located line of the Southern Pacific Railroad Company aforesaid, and any lawfully designated or located line of the Atlantic and Pacific Railroad Company would be, or are, upon the same general line, or would have intersected or intersect each other. They deny that if the Southern Pacific Railroad Company had (as it did) designated its line of route from Tehachapi Pass by way of Los Angeles to a point at or near the Colorado River, as claimed by these respondents, or between such terminal points at all, that such route would have been upon the same general

line as the pretended route of the Atlantic and Pacific Railroad Company as alleged in said bill to have been located by it, or any line or route which could have been lawfully designated or located by said Atlantic and Pacific Railroad Company under the Act of Congress of July 27, 1866, above referred to or otherwise.

They deny that any line or route of the Atlantic and Pacific Railroad Company has ever been lawfully located or designated in the State of California, or any limits of the grant for such Company ever lawfully fixed or in any wise defined or ascertained, and deny that the lands in suit fell or fall within any limits of any grant to the Atlantic and Pacific Railroad Company. They deny the allegation in said bill contained, that none of said lands were covered by the grant to the Southern Pacific Railroad Company, and that none of said lands were of the category of lands which were to be granted to said company, and each of them, and aver the contrary thereof.

And these respondents further show that upon the filing by said Southern Pacific Railroad Company of the map or plat of its line on said 3rd day of April, 1871, as hereinbefore stated, the Secretary of the Interior, under date of April 3, 1871, directed the Commissioner of the General Land Office to withdraw the granted lands along the route of said railroad as designated on said map from pre-emption, private entry and sale, and the Commissioner of the General Land Office, under date of April 21st, 1871, issued instructions to the registers and receivers of the proper United States District Land Offices in California, to withdraw from

sale or location, pre-emption or homestead entry, all the odd-numbered sections of public lands within thirty miles of the said line of said railroad, and these respondents aver that all the lands mentioned in the bill of complaint in this suit, which were public lands at the date of such orders for withdrawal, were therewith withdrawn according to the said instructions. Certified copies of said orders of withdrawal are hereto annexed and made part of this answer, marked "Exhibit A," a certified copy of the official diagram, defining and marking the twenty and thirty miles limits opposite said railroad, is herewith filed and made part of this answer, marked "Exhibit—

These respondents aver that the line of route of the Southern Pacific Railroad through said lands had been duly located, and the lands granted to it by said 23d section of the said Act of March 3, 1871, had been duly withdrawn from market for the benefit of the respondent, the Southern Pacific Railroad Company, before the said Atlantic and Pacific Railroad Company attempted, or pretended, to designate or locate its general route, or line, for its road through or opposite to the said lands, or any part of such general route.

And these respondents aver that the respondent herein, the Southern Pacific Railroad Company, under and in fulfilment of the provisions of the said Acts of Congress hereinbefore cited, duly located, constructed and completed its said railroad from a point near Tehachapi Pass, by way of Los Angeles, to the Colorado River, and Commissioners appointed by the President of the United States, duly reported the fact of such completion, and said railroad was from time to time duly approved and accepted by the President of

the United States, and maps thereof duly filed in the General Land Office, as above stated.

And these respondents ask leave to refer to and exhibit herein, certified transcripts from the Department of the Interior at Washington to show such maps, and the action of said Commissioners and of the President of the United States, and the Interior Department in this matter.

VI.

These respondents allege that the line of route for the said railroad from Tehachapi Pass, by way of Los Angeles, to a point at or near the Colorado River, and for all the route between the terminal points named in said Act of Congress, has been located and constructed by the Southern Pacific Railroad Company in accordance with the said Act of Congress, and they deny that said line of route is upon the same general line as the pretended route of the Atlantic and Pacific Railroad in California, and the said respondents claim and aver that the lands described in the said bill of complaint were and are of the category of lands granted to the said Southern Pacific Railroad Company, and were, and are, sections and parts or sections of odd numbers, and within the limits of said grant.

VII.

These respondents admit that the greater part but not all of the lands in suit herein are situated within twenty miles of the pretended general or preliminary route of the said Atlantic and Pacific Railroad from San Francisco to the Needles, but they deny that

they are situated within twenty miles, or any other distance, of any lawfully designated or located route or line of route of said railroad company or within any lawful limits of any grant to said Company. They admit that as to the actual mineral character of said lands they were in the same condition in respect to minerals in the whole of the year A. D. 1866, that they were and have been all the time from that year down to and including the 3rd day of April, 1871, but they are uninformed as to whether there were changes during such period in the knowledge or understanding, or general knowledge or understanding, as to the mineral character thereof.

VIII.

Replying to paragraph eight of the Bill of Complaint, these respondents deny the allegations of said paragraph and each of such allegations, and aver that their claim to the lands in suit herein is legal and valid and founded upon express grant thereof to the said Southern Pacific Railroad Company, for and upon a full and executed consideration from the complainant, and as to some of said lands they ask leave to refer to and show a patent or patents thereof to said Southern Pacific Railroad Company from the Government of the United States, legally issued and duly authenticated.

And these defendants further say, that so far as the right of way of the Southern Pacific Railroad Company one hundred feet in width on each side of its railroad from a point at or near Tehachapi Pass by way of Los Angeles to the Colorado River and its

grounds for station buildings, workshops, depots, machine shops, switches, side tracks, turn tables and water stations are concerned, it claims and is entitled to the same under and by virtue of the provisions of Section 23 of the Act of March 3, 1871, hereinabove referred to, which conferred upon the Southern Pacific Railroad Company of California all the rights, grants and privileges granted to said Southern Pacific Railroad Company of California, by the Act of July 27th, 1866, including those specifically mentioned and referred to in Section 2 of said last mentioned Act; and it avers that at the time the pretended line of the Atlantic and Pacific Railroad Company from San Francisco to the Needles is pretended to have been designated by a plat thereof, filed in the Office of the Commissioner of the General Land Office, the United States did not have full title, not reserved, sold, granted or otherwise appropriated and free from pre-emption or other claims or rights, to the said right of way one hundred feet in width on each side of said railroad of said Southern Pacific Railroad Company, or such grounds for station buildings, workshops, depots, machine shops, switches, side tracks, turn tables and water stations, but such right of way and lands had been reserved, granted and appropriated to and for the Southern Pacific Railroad Company, and were subject to its claims and rights for the purposes above stated, and no right or claim of the Atlantic and Pacific Railroad Company present or prospective thereto or in respect thereof ever did attach or could have attached thereto or to any part thereof.

IX.

These respondents admit that they claim, and they aver the fact to be, that a line of railroad and telegraph from Tehachapi Pass by way of Los Angeles to the Colorado River has been constructed by the Southern Pacific Railroad Company within the time, and in the manner provided by said Act of Congress of March 3, 1871, herein referred to, and that Commissioners appointed by the President of the United States have reported that such railroad was constructed in all respects in compliance with said Act, and these respondents ask leave to refer to the reports of the Commissioners now on file in the Department of the Interior in Washington City, and to produce and file herein certified copies of said reports. They deny that any such claims are pretences, or are unfounded, and aver that the Southern Pacific Railroad Company, named in said Act of Congress of March 3, 1871, did construct the said railroad and telegraph line between said terminal points, within the time and in the manner provided by said Act of Congress, and deny the averments to the contrary thereof in said bill contained.

X.

These respondents admit that on or about the 2d day of December, 1865, a corporation was organized under the laws of the State of California, under the corporate name and style of the Southern Pacific Railroad Company, and under a general law of said State, approved May 20, 1861, entitled, "An Act to provide for the incorporation of railroad companies and the

management of the affairs thereof, and other matters relating thereto." It admits that said act is printed in the Statutes of California, 1861, at page 607, and prays to refer thereto.

XI.

These respondents admit that the said corporation, "The Southern Pacific Railroad Company," was formed for the purpose and with the corporate powers, as stated in the Articles of Incorporation, of constructing, owning and maintaining a railroad from some point on the Bay of San Francisco, in the State of California, and to pass through the counties of Santa Clara, Monterey, San Luis Obispo, Tulare, Los Angeles and San Diego to the town of San Diego, in said State; thence eastward through said county of San Diego to the eastern line of the State of California, there to connect with a contemplated railroad to the Mississippi River; and they refer to said Articles of Incorporation for the precise contents, purport and effect thereof.

XII.

These respondents aver that on or about the 11th day of October, A. D. 1870, under and by virtue of the general laws of the State of California on that behalf, the said Southern Pacific Railroad Company, the San Francisco and San Jose Railroad Company, the Santa Clara and the Pajaro Valley Railroad Company, corporations organized and existing under the laws of California, entered into real, but they deny that they entered into pretended, articles of consolidation and amalgamation, consolidating and amalgamating their capital stocks, debts, property, assets and franchises

under the name of the Southern Pacific Railroad Company, in the manner provided by the laws of California. They admit and aver that such articles were signed, published and filed as provided by the laws of California.

They pray leave to refer to such articles of consolidation and amalgamation, if material to any purposes of this suit, and to the laws of California authorizing the same, and to the laws of California affecting the corporations aforesaid, or any of them, and to the amendatory articles of the Southern Pacific Railroad Company filed . . . They deny that by any such articles or agreement of consolidation and amalgamation, or by any consolidation or amalgamation, a different capital was made, any substantially new stock issued, or a new or different corporation created, but on the contrary, they aver that the corporation thereafter existing was a consolidation and amalgamation of the theretofore existing corporations, and not a newly created corporation. They pray leave to refer to the Articles of Incorporation of the consolidating companies if in anywise material to this suit. They allege that said consolidation and amalgamation of said corporations were authorized by the laws of California and by the laws of the United States, so far as applicable, and were, and are, legal and valid, and deny all allegations in said bill to the contrary thereof; they deny that such consolidation and amalgamation was unauthorized by the laws of the State of California or without the consent of said State, or was unauthorized by the laws of the United States, or without authority from the United States, or was, or is illegal or void.

XIII.

These respondents aver that on or about the 12th day of August, 1873, under and by virtue of the laws of the State of California on that behalf, the said Southern Pacific Railroad Company as it existed after the said consolidation and amalgamation of 1870, and composed of the consolidated and amalgamated companies above referred to and the Southern Pacific Branch Railroad Company, a corporation, organized and then existing under the laws of California, formed for the purpose and with the corporate powers stated in its articles of incorporation, of constructing, owning and maintaining a railroad within the State of California, did consolidate and amalgamate their capital stock, debts, property, assets and franchises under the name and style of the Southern Pacific Railroad Company, and entered into articles of consolidation and amalgamation of which Exhibit "A," attached to the plaintiff's bill is a copy, and that said articles were duly signed, published and filed as required by the laws of California. They pray leave to refer to such articles so far as material to this suit, and to the laws of California authorizing the same. They aver that such consolidation and amalgamation and such articles of consolidation and amalgamation were real and not pretended, and deny that by such articles of agreement of consolidation and amalgamation, or by any consolidation and amalgamation, a new capital stock or a new or different corporation was created, or purported to be created, but they aver that the corporation thereafter existing was a consolidation and amalgamation of the theretofore existing corporations, and not a newly created corporation.

As to the contents, purport and effect of the articles of incorporation of the consolidating companies, they pray leave to refer to the same if in any wise material to this suit; and they pray leave to refer to the laws of the State of California as existing in, and prior to, 1873, authorizing the consolidation and amalgamation of railroad companies incorporated under the laws of that State.

These respondents deny that such articles of consolidation and amalgamation were illegal or void, or unauthorized or prohibited by the laws of the State of California, or were unauthorized or prohibited by the laws of the United States, or were entered into without authority from the Congress of the United States, or without other competent authority, but, on the contrary, they aver that the consolidation and amalgamation of said railroad companies was made in conformity with the laws of the State of California, whose action in that behalf was fully authorized and recognized by the Congress of the United States, and that such consolidation and amalgamation was and is in all respects valid.

These respondents deny that by entering into said articles of consolidation and amalgamation the said Southern Pacific Railroad Company named in the Act of Congress, of March 3, 1871, forfeited, abandoned or released to the United States, all, or any part of the lands granted to it by said Act of Congress, or all or any rights, grants, franchises or privileges conferred by said Act, or all or any right to earn or acquire any and all lands under said Act.

XIV.

These respondents admit that the Southern Pacific Railroad Company, which is defendant herein, claim to have, and they aver that it has patents, issued by the United States to it in due form of law, purporting to convey and conveying to said company a portion of the lands in suit herein. It avers that said patents were real and not pretended, and were duly recorded in the General Land Office before they were delivered to said company, and still remained so of record, and since the delivery thereof the same have been recorded in the County of Los Angeles, and in the State of California.

These respondents deny that the lands thus patented are unknown to the complainant, and deny that the patents therefore were issued illegally or without authority of law or are illegal or void. On the contrary, these respondents allege that said patents are in all respects legal and valid, and they ask leave here to refer to the same, and to present and file as evidence in this suit duly certified copies thereof, if deemed necessary.

XV.

Replying to paragraph XV of the complainant's bill these respondents admit that the defendants and respondents, other than the Southern Pacific Railroad Company, claim to be, and they, and each of them, aver that they are in each and every instance bona fide purchasers for value received, without notice, from the Southern Pacific Railroad Company, a corporation named in said Act of Congress of March 3,

1871, and they further aver that the time of the purchase in each instance by said respondents and defendants, and each of them, from the said Southern Pacific Railroad Company, is set forth in Exhibit "B" hereto attached and made part of this answer, and also copies of the deeds and parties to the deeds and contracts of sale and the contents thereof, are hereto attached and marked Exhibits "G" and "H," and made a part of this answer. That in said Exhibit "B" is also given the date and day of each purchase made by said defendants and respondents, and each of them. That at the time the respondents, other than the Southern Pacific Railroad Company, purchased said lands as are set forth in said Exhibit "B," said Southern Pacific Railroad Company, the vendor at that time, was the owner and seized in fee of said lands, and said respondents entered into the possession of the said lands, all of which are involved in this suit under said purchase, and the consideration in each instance paid by the said respondents to the said Southern Pacific Railroad Company, which appears in each instance opposite the name of each respondent in said Exhibit "B," was a bona fide one and was paid truly and in a bona fide manner, and without notice, at the time of said payment or at any time prior thereto in each instance. And said respondents other than the Southern Pacific Railroad Company aver that they have no knowledge as to which, if any, of the co-respondents and co-defendants herein claim any right in the lands in suit, or any part of parcel thereof, under or by virtue of an Act of Congress approved March 3, 1887, (24 Stat., 556) referred to in the bill of complaint.

XVI.

These respondents admit that the respondents D. O. Mills and Garrit L. Lansing, have a mortgage or deed of trust from the Southern Pacific Railroad Company for the above described lands to secure the payment of certain indebtedness of said defendant railroad company, and that said mortgage is dated April 1, 1875, and is executed in due form of law, and is recorded in Los Angeles and San Bernardino and Ventura Counties, California, where the same has been of record since 1875, but they deny that complainant has any title to said lands or any part thereof, which can be clouded or injuriously or otherwise affected thereby.

XVII.

They admit that the lands described in said bill are to a considerable extent naturally timbered or wooded lands, and valuable for the timber and wood thereon. While admitting that they claim, but denying that they pretend to own, an interest in said lands, these defendants deny that they or their grantees have ever unlawfully entered on said lands, or unlawfully chopped down any timber or trees thereon, and deny that said lands, timber or trees, or any thereof, were at any time since the taking effect of the grant to the defendant, the Southern Pacific Railroad Company above referred to, the property of the complainant in this suit. They admit and aver that the Southern Pacific Railroad Company and its grantees have at various and divers times carried away timber and trees from said lands and applied the same to their own use, and

are now removing from said land wood cut thereon, and are intending to and unless enjoined therefrom will chop down other trees on said land, but they deny that any such acts were, are or will be in any wise unlawful or have resulted or will or could result in any injury to the complainant.

XVIII.

They admit that the amount in controversy in this suit exceeds the sum or value of five thousand dollars, exclusive of interest and costs.

XIX.

They admit and aver that the defendant, the Southern Pacific Railroad Company, while claiming (but not pretending) to own an interest in said lands, has at various and divers times during the past ten years by actual (but not pretended) contracts and conveyances sold and conveyed (but not pretending to sell or convey) large portions of said lands to other of the defendants herein, and by itself and its grantees has realized from wood and timber on said lands considerable sums of money which it and they have appropriated to its and their own use.

XX.

The respondent, the Southern Pacific Railroad Company, further answering, states that the schedule hereto annexed, marked "Exhibit B," and made part of this answer, is a correct schedule of all such lands claimed in this suit, as the said respondent has sold prior to the filing of the bill of complaint herein, together with the names of the parties who were the purchasers, and the

amounts of money received by the said respondent, upon the contract of sale to each purchaser respectively, and it avers that at the time of such sales, and each of them, the said defendant railroad company was the owner of the lands so sold, and that it is now the owner of all such lands which have not been so sold by it.

XXI.

And all of the respondents herein, other than the Southern Pacific Railroad Company, D. O. Mills and Garrit L. Lansing, admit and allege that they and each of them claim to be bona fide purchasers for value, from the said Southern Pacific Railroad Company and its grantees, also purchasers in good faith, but not otherwise, of all of the lands hereinbefore specifically described and set forth in Schedule "B," as having been sold by the respondent, the Southern Pacific Railroad Company, and that they purchased the same in good faith and for a valuable consideration, believing and still believing that at the time of their said purchase of said lands they were owned by absolute title in fee simple by said Southern Pacific Railroad Company and its said grantees.

That attached hereto and made a part of this answer are several exhibits which respondents ask may be taken as a part of the answer, and referring thereto and to each and every allegation to which said exhibits are pertinent, namely:

Exhibit "A," being certified copy of a letter from Willis Drummond, Commissioner of the General Land Office, dated April 21, 1871, to the Register and Receiver, Los Angeles, California, order of withdrawal

of lands within the limits of the Southern Pacific Railroad Company's Branch Line.

Exhibit "B," referred to on page 22 of the Answer, being a statement, under date of July 3, 1890, of the condition on the books of the Land Department of the Southern Pacific Railroad Company of lands involved in said suit, tabulated under the following headings:

"Contract No. Contract dated. Purchaser. Address. Fraction. See. Twp. Rge. Acres. Amount sold for. Surveyed or unsurveyed. A. & P. R. R. Co. Limits. S. P. R. R. Limits. Main Branch Line. Selected or not selected by S. P. R. R. Co. No. and date of selection lists. Costs of surveying, selecting and conveying, which is divided into three columns as follows: Surveying fees, selecting Reg. and Rec. fees, costs of conveying. Remarks."

Exhibit "C." Certified copy of List No. 21 of lands selected by the Southern Pacific Railroad Company within the granted limits of the grant made by the 23rd Section of the Act of Congress, approved March 3, 1871, on account of the line known as the branch line of said Southern Pacific Railroad Company, which lands are situate in the Los Angeles, California, Land District.

Exhibit "D." Certified copy of list numbered 25, of lands selected by the Southern Pacific Railroad Company, within the indemnity limits grant made by the 23d Section of the Act of Congress, approved March 3, 1871, on account of the line known as the branch line of said Southern Pacific Railroad Company, which lands are situate in the Los Angeles, California Land District; together with the designation of

losses stated as a basis for such selections; also supplemental list of losses.

Exhibit "C 2." Certified copy of a letter to the Commissioner of the General Land Office, January 19th, 1889, by Henry Beard, Attorney for the Southern Pacific Railroad Company of California; also copy of certificate of deposit No. 1431 of the National Bank of the Republic, Washington, D. C., dated January 19th, 1889, by said Railroad Company of \$12.50 on account of conveying the lands located at the Los Angeles, California, Land Office, at Los Angeles, California, List No. 21.

XXII.

Further answering, the respondents deny that when the grant was made to the Southern Pacific Railroad Company by the Act of Congress of March 3, 1871, it was found that the line of route which said Company was required to adopt and did adopt, was upon the same general line as the route of the Atlantic and Pacific Railroad Company from Springfield, Missouri, to the Pacific.

Respondents deny that there ever was any general line of route of road adopted or designated by the Atlantic and Pacific Railroad Company in the State of California, or from the Colorado River to the Pacific Ocean.

Respondents deny that the route of the said Atlantic and Pacific Railroad Company, from Springfield, Missouri, to the Pacific Ocean, as said grant was made to the said Company by the said Act of Congress of July 27, 1866, or by any Act of Congress, or as said

route may have been in anywise located or adopted by said Company (if it ever was so located or adopted), was, or is, upon the same general line as the route of the said Southern Pacific Railroad Company from Tehachapi Pass by the way of Los Angeles to the Colorado River at Fort Yuma, according to the terms of said grant to the said Southern Pacific Railroad Company, of March 3, 1871, or as said route was in fact adopted or located, or at all; respondents further deny that the lands in suit herein were at the intersection of any such two lines of route, or at the place where any such two routes were or are upon the same general lines, and the respondents deny that the said lands or any lands mentioned herein were excluded or deducted from the grant to said Southern Pacific Railroad Company, under said Act of March 3, 1871.

XXIII.

And these defendants, further answering, say that the Southern Pacific Railroad Company, to which the grant of lands was made by the Act of Congress of March 3, 1871, still exists under the laws of the State of California, under which the same was created, and has at no time ceased to exist or surrendered or lost the rights conferred by said act, and is the same corporation which is made party defendant to this bill, and that any and all amalgamations or consolidations therewith of other railroad corporations organized under the laws of the State of California have been made in pursuance of and subject to the terms and provisions of the laws of the State of California, and by due and legal authority, and that the United

States by constant and continued action of all branches of the Government has recognized the continued existence of the Southern Pacific Railroad Company as the grantee of lands under the Act aforesaid, and has always claimed and exercised, and still claims and exercises, against the Southern Pacific Railroad Company, notwithstanding the amalgamations from time to time of various other railroad corporations of the State of California with the Southern Pacific Railroad Company, originally constituted under the laws of said State, all the rights conferred upon the United States, and has demanded and enjoyed the benefit, and still demands and enjoys the benefit, of the performance of all the duties imposed upon the Southern Pacific Railroad Company under or by virtue of the said Act of Congress, and each thereof, and has claimed and exercised and still claims and exercises the rights and has demanded and enjoyed the benefit of and still demands and enjoys the benefit of the performance of the duties prescribed in said Act of Congress in respect of the line constructed by the Southern Pacific Railroad Company, from a point at or near Tehachapi Pass by way of Los Angeles to the Colorado River, and is estopped in law and equity from asserting any claim that the Southern Pacific Railroad Company as now existing was not the same corporation named and designated in said Act, or that the said railroad was not constructed by the grantee named therein, and that it could not in any event be adjudged in favor of the United States in this suit or otherwise that the said

railroad was not constructed by the grantee named in said Act, or that the Southern Pacific Railroad Company as now existing is not entitled to the benefits of the grants named therein without the surrender and abandonment by the United States of its claim to the exercise by it of the rights and privileges heretofore claimed and exercised by it, and to the enjoyment by it of the benefit of the performance of the public duties heretofore claimed and enjoyed by it in respect of the Southern Pacific Railroad Company as from time to time existing and in respect of the said road under and by virtue of the Act of Congress above referred to.

XXIV.

And these defendants, further answering, say, that the United States cannot now restore these defendants to the same position in respect to the land grant to the Southern Pacific Railroad Company under said Act of March 3, 1871, and its rights and claims to indemnity for lost lands which it would have had if the United States had not accepted its selections of lands in controversy in this suit and issued patents to the said defendant for such of said lands as have been patented to it, inasmuch as since the date of said patents the United States has permitted other parties to acquire claims to and has granted other parties patents for valuable lands within the indemnity limits of its road under said Act of March 3, 1871, which would prevent this Company from making now as favorable indemnity selections as it might then have made, and because the acceptance of such selections and issue of such patents has delayed the exercise by said Com-

pany of the right of selection of indemnity lands which this Company would have been entitled to, and has deprived it of the use and benefit of the lands which might have been derived thereunder at times when sales thereof might have been made upon terms to the defendant far more favorable than any upon which like lands could now be sold.

XXV.

And these defendants, further answering, say, that heretofore and on or about the first day of April, 1875, the Southern Pacific Railroad Company executed to the defendant, D. O. Mills, and one Lloyd Tevis, a mortgage bearing date on that day to secure a proposed issue of negotiable mortgage bonds of said Southern Pacific Railroad Company therein referred to, a copy of which mortgage is filed herewith and marked Exhibit "E," and prayed to be taken as part of this answer. That negotiable mortgage bonds to very large amounts were from time to time, between said 1st day of April, 1875, and September 25, 1891, duly issued thereunder and sold to and purchased by the public in good faith and for full and valuable consideration, and that of such bonds there are now outstanding in the hands of *bona fide* holders thereof for value bonds to the amount at their par value of upwards of thirty-one million dollars. That Garret L. Lansing, named as defendant in this suit, has been duly substituted as mortgage trustee thereunder in place and stead of said Lloyd Tevis, named as a trustee in said original mortgage.

XXVI.

And these defendants, further answering, say, that heretofore and on or about the 25th day of August, 1888, and before the institution of this suit the said Southern Pacific Railroad Company executed to the Central Trust Company of New York, a corporation created, organized and existing under and by virtue of the laws of the State of New York, and having its principal place of business in the City and County of New York, a further mortgage or deed of trust, bearing date on said 25th day of August, 1888, to secure a proposed issue of negotiable mortgage bonds of said Southern Pacific Railroad Company, therein referred to, a copy of which mortgage is filed herewith and marked Exhibit "F", and prayed to be taken as a part of this answer. That negotiable mortgage bonds to large amounts were from time to time, subsequent to said 25th day of August, 1888, and prior to the commencement of this suit, duly issued thereunder and sold to and purchased by the public in good faith, and for full and valuable consideration, and that of such bonds so issued prior to the institution of this suit bonds to about of six million, nine hundred and eighty-one thousand dollars are now outstanding in the hands of *bona fide* holders thereof for value, and that the said Central Trust Company of New York is a necessary party to this suit; and these defendants pray the like effect for the foregoing allegations as if the non-joinder of such Central Trust Company of New York as a party to this suit were specially pleaded herein.

XXVII.

And these defendants, further answering, say, that being required so to do by the United States, the said Southern Pacific Railroad Company has from time to time paid the following fees and charges to the United States upon and in respect of the lands in controversy in this suit, that is to say:

The sum of six thousand one hundred and thirty-five and 34-100ths (\$6,135.34) dollars, as and for surveying and register's and receiver's and surveying fees, required by the United States in respect of said lands, and that the United States could not in any event or under any circumstances be entitled to recover, maintain or assert any claim to the said lands, or cancel or have cancelled the patents heretofore issued to said Company in respect thereof until it should have repaid to said Railroad Company the amounts above mentioned with interest, and in all other respects restored the Company to the like position in all respects which it occupied at the time when such selections of said land by the Company were accepted and approved, and at the time when the patent therefor was issued to it as aforesaid by the United States.

XXVIII.

The respondents deny all and all manner of unlawful combination and confederacy with which they are by the said bill charged, without this, that any other matter, cause or thing in the complainant's said bill of complaint contained, material or necessary for these respondents to make answer unto, but not herein and hereby well and specifically answered, confessed, traversed, avoided or denied, is true to the knowledge or belief

of these respondents, all of which matters and things these respondents are ready and willing to aver, maintain, and prove, as this Honorable Court shall direct, and pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

JOSEPH D. REDDING,
Solicitor and of Counsel for Respondents.

HARVEY S. BROWN,
Of Counsel for Respondents.

[Endorsed]: No. 184. Circuit Court of the United States, Ninth Circuit, Southern District of California. United States of America, Complainants, vs. S. P. R. R. Co. and others, Respondents. Amended Answer. Joseph D. Redding, Solicitor for Respondents, 33-37 Chronicle Building, San Francisco, Cal. Rec'd copy hereof (except—exhibits) May 31, 93. Joseph H. Call, Spl. Asst. U. S. Atty. Received May 31st, 1893, Wm. M. Van Dyke, Clerk. Filed June 12, 1893. Wm. M. Van Dyke, Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
Southern District of California.*

UNITED STATES OF AMERICA, }
vs. } No. 184.
SOUTHERN PACIFIC RAILROAD CO. }

Respondent's Answer and Exhibits.

"F" Respondent's Exhibit "A" M. N.
U. S. v. S. P. No. 184. W. C. E.
U. S. Circuit Ct., 9th
Ct., So. Dist. of Cala.

(4-207.)

DEPARTMENT OF THE INTERIOR,

General Land Office,

Washington, D. C. April 18, 1891.

I, W. M. Stone, Acting Commissioner of the General Land Office, do hereby certify that the annexed copy of office letter, dated April 21, 1871, to the Register and Receiver at Los Angeles, ordering the withdrawal of lands within the limits of the Southern Pacific Railroad (branch line), is a true and literal exemplification of the original as it appears of record in this office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the seal of this office to be affixed at the City of Washington, on the day and year above written.

(Seal)

W. M. STONE,

18,236 b-1 m Acting Commissioner of General Land Office.

Refer in reply to this initial:
Address only the Commissioner of the General Land
Office.

DEPARTMENT OF THE INTERIOR,
General Land Office,
Washington, D. C., April 21st, 1871.

Register and Receiver,
Los Angeles, California.

Gentlemen: By Act of March 3d, 1871, Sec. 23, the Southern Pacific Railroad Co. is authorized to construct a railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado river, with the same grant of lands, as were granted to said company by Act of July 27, 1866.

The company having filed a diagram designating the general route of said road, I herewith transmit a map showing thereon the line of route, as also the 20 and 30 mile limits of the grant to the line of withdrawal for the Southern Pacific road under the Act of 1866, and you are hereby directed to withhold from sale or location, pre-emption or homestead entry, all the *odd numbered* sections falling within those limits.

The *even numbered sections* within the limits of 20 miles you will increase in price to \$250 per acre, and will dispose of them at that price, but only under the pre-emption and homestead laws.

When pre-emption or homestead entries may have had legal inception prior to the receipt of this order, the settlers may, of course, prove their claims either

upon odd or even numbered sections at the rate of \$125 per acre.

This order will take effect from the date of its receipt by you, and you will please acknowledge receipt by date.

The even numbered sections between the 20 and 30 mile or indemnity limits are not affected by this order.

Very respectfully,

WILLIS DRUMMOND,
Commissioner.

[Endorsed]: Filed May 1st, 1891. Wm. M. Van
Dyke, Clerk.

U. S. Circuit Ct. 9th Ct., So. Dist. of Cala. Respondent's Exhibit "C" U. S. of A. v. S. P. R. Co. No. 184.

UNITED STATES LAND OFFICE

LOS ANGELES, CALIFORNIA,

January 16, 1885.

LIST No. 21

LANDS SELECTED

BY THE

SOUTHERN PACIFIC RAILROAD COMPANY

GRANTED LIMITS.

BRANCH LINE.

F

(4—207a.)

F. W. C.

W. C. E.

DEPARTMENT OF THE INTERIOR,
General Land Office,

Washington, D. C., Nov. 7th, 1890.

I, Lewis A. Groff, Commissioner of the General Land Office, do hereby certify that the annexed copy of list numbered twenty-one, of lands selected by the *Southern Pacific Railroad Company*, within the granted limits of the grant made by the 23rd section of the Act of Congress, approved March 3, 1871, on account of the line known as the branch line of said Southern Pacific Railroad Company, which lands are situate in the *Los Angeles, California*, land district, is a true and literal exemplification of the original on file in this office, but said list has not been examined and approved by this office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

(Seal)

LEWIS A. GROFF,

14,514 b—1m Commissioner of General Land Office.

OFFICE OF THE SOUTHERN PACIFIC }
RAILROAD COMPANY,
San Francisco, California. }

I, Joseph Willcutt, Secretary of the Southern Pacific Railroad Company, do hereby certify that Jerome Madden was appointed Land Agent of the said Southern Pacific Railroad Company by the Board of

Directors of said company, at a meeting held on the tenth (10th) day of May, A. D. 1876, and that since that time he has been continuously, and is now, the Land Agent of the said Southern Pacific Railroad Company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the corporate seal of the said Southern Pacific Railroad Company the 18th day of November, A. D. 1884.

(Seal)

JOSEPH L. WILLCUTT,

Secretary of the Southern Pacific Railroad
Company.

LIST OF LANDS IN THE
LOS ANGELES LAND DISTRICT, CALIFORNIA,
SELECTED BY THE
SOUTHERN PACIFIC RAILROAD COMPANY,
OF CALIFORNIA.

The undersigned, the duly authorized Land Agent of the Southern Pacific Railroad Company, of California, under and by virtue of the 23rd section of the Act of Congress, approved March 3rd, 1871, entitled "An Act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," and under and by virtue of the Act of Congress, approved July 27th, 1866, entitled "An Act granting lands to aid in the construction of a Railroad and Telegraph line from the States of Missouri and Arkansas to the Pacific Coast," and the further Act approved July 25th, 1868, entitled "An Act to

extend the time for the construction of the Southern Pacific Railroad in the State of California," and the Joint Resolution of Congress, approved June 28th, 1870, "concerning the Southern Pacific Railroad of California," and under and in pursuance of the rules and regulations prescribed by the Commissioner of the General Land Office, hereby makes and files the following list of selections of public lands claimed by the said Company as inuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said Acts of Congress, and the location of the line of route of the railroad and telegraph of said Company, being in part for the first (1st), second (2d), third (3d) and fourth (4th) sections (two hundred, twenty-eight and 59-100 (228 59-100) miles) of the same, commencing at a point in the N. E. $\frac{1}{4}$ sec. 17, T. 11 N., R. 12 W., S. B. B. & M., and ending at a point in S. W. $\frac{1}{4}$ sec. 24, T. 5 S., R. 7 E., S. B. B. & M., which said sections of road and telegraph have been duly accepted by the President of the United States, as provided in the aforesaid Acts and Joint Resolution of Congress. The selections being particularly described as follows:

JEROME MADDEN,

Land Agent of the Southern Pacific Railroad
Company.

Railroad List.

North of Base Line, and

No.	Part of Section	No. of Section	No. of Town.	No. of Range	Area, Acres		Fees of Register and Receiver
					100		
All		13	1 N	1 W		640 00	
S $\frac{1}{2}$ of SW $\frac{1}{4}$		17	1 N	7 W		80 00	
Lots 1, 2, 3, 4		19	"	"		141 58	
All		23	"	"		640 00	
SW $\frac{1}{4}$ (fract.)		19	1 N	8 W		160 60	
Frac. SW $\frac{1}{4}$		19	1 N	9 W		164 00	
Lot 2		21	1 N	10W		11 28	
NE $\frac{1}{4}$		19	2 N	4 W		160 00	
NW $\frac{1}{4}$ of NE $\frac{1}{4}$;							
E $\frac{1}{2}$ of NW $\frac{1}{4}$;							
Lot 2		31	N 4	18W		160 05	
All fract.		3	5 N	10W		669 08	
All fract.		5	"	"		661 66	
All fract.		7	"	"		611 40	
All		9	"	"		640 00	
N $\frac{1}{2}$ and SE $\frac{1}{4}$		17	"	"		480 00	
All fract.		1	5 N	11W		650 92	
SE $\frac{1}{4}$ and fract. N $\frac{1}{2}$		3	"	"		502 52	
E $\frac{1}{2}$		11	"	"		320 00	
Forward						6693 09	

West of San Bernardino Principal Meridian.

REMARKS.

Railroad List.

North of Base Line, and

No.	Part of Section	No. of Section	No. of Town.	No. of Range	Area, Acres	Fees of Register and Receiver
					100	
	Brought Forward,				6693.09	
All	29	6 N	10W		640.00	
All fract.	31	"	"		642.78	
All	33	"	"		640.00	
All	13	6 N	11W		640.00	
All	15	"	"		640.00	
E $\frac{1}{2}$	19	"	"		320.00	
All	21	"	"		640.00	
All	23	"	"		640.00	
All	25	"	"		640.00	
All	27	"	"		640.00	
E $\frac{1}{2}$	33	"	"		320.00	
All	35	"	"		640.00	
All fract.	1	6 N	12W		637.98	
All fract.	3	"	"		636.17	
All fract.	5	"	"		634.12	
All	7	"	"		640.00	
All	9	"	"		640.00	
All	11	"	"		640.00	
All	13	"	"		640.00	
All	15	"	"		640.00	
All	17	"	"		640.00	
Forward,					19484.14	

West of San Bernardino Principal Meridian.

REMARKS.

Railroad List. North of Base Line, and

No.	Part of Section	No. of Section	No. of Town	No. of Range	Area, Acres		Fees of Register and Receiver
					100	100	
	Brought Forward.				19484	14	
All		21	6N	12W	640	00	
All		23	"	"	640	00	
All		27	"	"	640	00	
All		33	"	"	640	00	
N $\frac{1}{2}$ of NW $\frac{1}{4}$		35	"	"	80	00	
All		3	6N	14W	640	00	
All fract.		5	7N	11W	646	78	
All fract.		7	"	"	645	18	
All		9	"	"	640	00	
All		17	"	"	640	00	
All fract.		19	"	"	641	21	
All		21	"	"	640	00	
All		29	"	"	640	00	
All fract.		31	"	"	642	56	
All		33	"	"	640	00	
All fract.		1	7N	12W	643	00	
All fract.		3	"	"	645	98	
All		11	"	"	640	00	
All		13	"	"	640	00	
All		17	"	"	640	00	
Forward,					31748	85	

West of San Bernardino Principal Meridian.

REMARKS.

Railroad List. North of Base Line, and

No.	PART OF SECTION	No. of section	No. of Town.	No. of Range	AREA, ACRES	Fees of
					100	Register and Receiver
	Brought Forward,				31748.85	
	All fract.	19	7 N	12W	645.92	
	All	23	"	"	640.00	
	All	25	"	"	640.00	
	All	29	"	"	640.00	
	All	33	"	"	640.00	
	All	35	"	"	640.00	
	All fract.	3	7 N	13W	636.60	
	All fract.	5	"	"	637.80	
	All	9	"	"	640.00	
	All	25	"	"	640.00	
	NE $\frac{1}{4}$; N $\frac{1}{2}$ of SE $\frac{1}{4}$; SE $\frac{1}{4}$ of SE $\frac{1}{4}$	33	7 N	14W	280.00	
	All fract.	5	8 N	10W	639.28	
	All fract.	7	"	"	628.84	
	All	11	8 N	11W	640.00	
	All fract.	19	"	"	654.78	
	All	29	"	"	640.00	
	All fract.	31	"	"	654.88	
	Forward,				42286.95	

West of San Bernardino Principal Meridian.

REMARKS.

Railroad List.

North of Base Line, and

No.	Part of Section	No. of Section	No. of Town.	No. of Range	Area, Acres		Fees of Register and Receiver
						100	
	Brought Forward,				42286	95	
All	25	8 N.	12W		640	00	
All	35	" "			640	00	
All	33	8 N.	13W		640	00	
All fract.	7	8 N.	14W		629	06	
All	27	" "			640	00	
All	35	" "			640	00	
All	5	8 N.	15W		640	00	
E $\frac{1}{2}$ of NE $\frac{1}{4}$;							
E $\frac{1}{2}$ of SE $\frac{1}{4}$	7	" "			160	00	
All	9	" "			640	00	
All	11	" "			640	00	
All	13	" "			640	00	
All	15	" "			640	00	
All	17	" "			640	00	
E $\frac{1}{2}$ of NE $\frac{1}{4}$;							
E $\frac{1}{2}$ of SE $\frac{1}{4}$	19	" "			160	00	
All	21	" "			640	00	
All	27	" "			640	00	
All	29	" "			640	00	
All	33	" "			640	00	
All	35	" "			640	00	
Forward,					53476	01	

West of San Bernardino Principal Meridan.

REMARKS.

Railroad List.

North of Base Line, and

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range	Area, Acres	Fees of Register and Receiver.
					100	
	Brought forward,				53476 01	
	E $\frac{1}{2}$	31	9 N 15W		320 00	
	All fractl.	5	10 N 15W		499 17	
	E $\frac{1}{2}$ of NW $\frac{1}{4}$; lots 1, 2, 3, 4	7	" "	"	146 58	
	All	9	" "	"	640 00	
	E $\frac{1}{2}$ of NE $\frac{1}{4}$; E $\frac{1}{2}$ of SE $\frac{1}{4}$	17	" "	"	160 00	
	All	21	" "	"	640 00	
	All	29	" "	"	640 00	
	E $\frac{1}{2}$	31	" "	"	320 00	
	All	33	" "	"	640 00	
	S $\frac{1}{2}$	17	11 N 12W		320 00	
	E $\frac{1}{2}$ of NE $\frac{1}{4}$; E $\frac{1}{2}$ of SE $\frac{1}{4}$	25	11 N 16W		160 00	
	Forward,				57961 76	

West of San Bernardino Principal Meridian.

REMARKS.

Railroad List.

North of Base Line, and

No.	Part of Section	No. of Section.	No. of Town.	No. of Range	Area, Acres	Fees of Register and Receiver.
					100	
	Brought Forward,				57961 76	
	All fractl.	5	2 S 6 W		653 08	
	SE $\frac{1}{4}$	7	" "		160 00	
	Fracel W $\frac{1}{2}$ of NE $\frac{1}{4}$; SE $\frac{1}{4}$	3	5 S 3 W		239 62	
	S $\frac{1}{2}$	9	" "		320 00	
	W $\frac{1}{2}$ of NW $\frac{1}{4}$; S W $\frac{1}{4}$	11	" "		240 00	
	All	15	" "		640 00	
	All	17	" "		640 00	
	All	21	" "		640 00	
	N $\frac{1}{2}$; SE $\frac{1}{4}$	23	" "		480 00	
	All	25	" "		640 00	
	W $\frac{1}{2}$	27	" "		320 00	
	E $\frac{1}{2}$; SW $\frac{1}{4}$	29	" "		480 00	
	N $\frac{1}{2}$; SE $\frac{1}{4}$; N $\frac{1}{2}$ of SW $\frac{1}{4}$	33	" "		560 00	
	All	35	" "		640 00	
	E $\frac{1}{2}$ of SW $\frac{1}{4}$; NW $\frac{1}{4}$; E $\frac{1}{2}$	17	6 S 1 W		560 00	
	NW $\frac{1}{4}$ of NE $\frac{1}{4}$; E $\frac{1}{2}$ of NE $\frac{1}{4}$; NW $\frac{1}{4}$	21	" "		280 00	
	Forward,				65454 46	

West of San Bernardino Principal Meridian.

REMARKS.

Railroad List.

North of Base Line, and

No.	Part of Section	Area, Acres			Fees of Register and Receiver
		No. of Section	No. of Town.	No. of Range	
	Brought Forward,				65454 46
	S $\frac{1}{2}$ of SW $\frac{1}{4}$	51	N	1 E	80 00
	N $\frac{1}{2}$	9	"	"	320 00
	SW $\frac{1}{4}$	11	"	"	160 00
	All	19	"	"	640 00
	NE $\frac{1}{4}$	35	"	"	160 00
	Forward				66814 46

West of San Bernardino Principal Meridian.

REMARKS.

Railroad List.

North of Base Line, and

No.	Part of Section	No. of Sections	No. of Town.	No. of Range	Area, Acres		Fees of Register and Receiver
						100	
	Brought Forward,				66814	46	
	E $\frac{1}{2}$ of NW $\frac{1}{4}$; E $\frac{1}{2}$ of SW $\frac{1}{4}$ and E $\frac{1}{2}$						
	Frac. NE $\frac{1}{4}$; Lot 2 of NW $\frac{1}{4}$; E $\frac{1}{2}$ of Lot 1 of N W $\frac{1}{4}$; E $\frac{1}{2}$ of S W $\frac{1}{4}$; SW $\frac{1}{4}$ of SW $\frac{1}{4}$	3	3 S 1 E		478	20	
	S $\frac{1}{2}$	5	"	"		399	20
	NW $\frac{1}{4}$	15	"	"		320	00
		21	"	"		160	00
	S $\frac{1}{2}$	5	3 S 2 E			320	00
	All	17	"	"		640	00
	N $\frac{1}{2}$ of NW $\frac{1}{4}$	21	"	"		80	00
	All	13	4 S 4 E			640	00
	E $\frac{1}{2}$	15	"	"		320	00
	All	23	"	"		640	00
	N $\frac{1}{2}$ of NE $\frac{1}{4}$; W $\frac{1}{2}$	25	"	"		400	00
	All	35	"	"		640	00
	Total,				71851	86	\$898 50

West of San Bernardino Principal Meridian.

REMARKS.

STATE OF CALIFORNIA, } ss.
City and County of San Francisco. }

I, Jerome Madden, being duly sworn, depose and say, that I am the land agent of the Southern Pacific Railroad Company; that the foregoing list of lands which I hereby select is a correct list of a portion of the public lands claimed by the said Southern Pacific Railroad Company as inuring to it, to aid in the construction of the railroad of said company from Mojave to Indian Wells, for which a grant of lands was made by the Acts of Congress approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, as aforesaid; that the said lands are vacant, unappropriated, and are not interdicted mineral nor reserved lands, and are of the character contemplated by the grant, being within the limits of twenty (20) miles on each side of the line of route for a continuous distance of two hundred, twenty-eight and 59-100 (228 59-100) miles, being for the first (1st) second (2d), third (3d) and fourth (4th) sections of said road, starting from a point in N. E. $\frac{1}{4}$ Sec. 17, T. 11 N., R. 12 W., S. B. B. & M. and ending at a point in S. W. $\frac{1}{4}$ Sec. 24, T. 5 S., R. 7 E., S. B. B. & M.

(Seal)

JEROME MADDEN.

Sworn to and subscribed before me this twenty-fourth day of November, 1884.

(Seal)

J. D. RUGGLES,

Dep. County Clerk of the City and County
of San Francisco, California, and ex-officio
Dep. Clerk of the Superior Court thereof,
the same being a court of record.

STATE OF CALIFORNIA, } ss.
City and County of San Francisco. }

I, William T. Sesnon, County Clerk of the City and County of San Francisco, State of California, and ex-officio Clerk of the Superior Court thereof, (which court is a court of record, having a seal), do hereby certify, that J. D. Ruggles, whose name is subscribed to the annexed jurat, was, at the time of signing the same, a Deputy County Clerk, etc., in and for said city and county, duly appointed, sworn and qualified and authorized by law to administer oaths, and full faith and credit are due to all his official acts as such deputy clerk.

And I do further certify, that I am well acquainted with the handwriting of the said J. D. Ruggles, and verily believe that the signature to the said annexed jurat is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the said Superior Court, at my office, in said city and county, this 24th day of November, A. D. 1884.

(Seal)

WILLIAM T. SESNON,

County Clerk, and ex-officio Clerk of the Superior Court.

UNITED STATES LAND OFFICE.

Los Angeles, Cal., January 16, 1885.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Southern Pacific Railroad Company, under the grant to the said Southern Pacific Railroad Company,

by Acts of Congress, approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, above mentioned, and selected by Jerome Madden, the duly authorized agent; and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify, that the filing of said list is allowed and approved; and that the whole of said lands are surveyed public lands of the United States, and within the limit of twenty (20) miles on each side; and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands, nor claimed as swamp lands; nor is there any homestead, pre-emption, State or other valid claim to any portion of said lands on file or record in this office.

We further certify, that the foregoing list shows an assessment of the fees payable to us, allowed by the Act of Congress approved July 1, 1864, and contemplated by the circular of instructions, dated January 24, 1867, addressed by the Commissioner of the General Land Office to registers and receivers of the United States Land Offices; and that the said company have paid to the undersigned, the receiver, the full sum of eight hundred ninety-eight 50-100 dollars (\$898.50-100) in full payment and discharge of said fees.

CHAS. R. JOHNSON,
Register.

J. W. HAVERSTICK,
Receiver.

DUPLICATE.
To be forwarded to the Commissioner of the General
Land Office.

(Form 1707.)

OFFICE OF THE ASSISTANT TREASURER U. S.

No. 139.

San Francisco, Cal., Nov. 25, 1884.

I certify that Jerome Madden, San Francisco, Cal., this day deposited to the credit of the Treasurer of the United States thirty-two hundred thirty-three 33-100 dollars on account of List No. 21, lands selected by Southern Pacific Railroad Co., Granted Limits, Branch Line, Los Angeles Land District.

Survey, \$2,425 00. Owk., \$808 33.
For which I have signed triplicate receipts.

\$3,233 33.

N. W. SPAULDING,
Assistant Treasurer U. S.

UNITED STATES SURVEYOR-GENERAL'S OFFICE,

San Francisco, California,

November 25th, 1884.

I, W. H. Brown, Surveyor-General for the United States, in and for the State of California, hereby report and certify that the Southern Pacific Railroad Company has this day filed with me, at San Francisco, a duplicate certificate of deposit, No. 139, dated November 25th, 1884, to the credit of the United States, showing that the sum of \$2,425.00 has been deposited as cost of survey, and \$808.33 for office work, and that the said sums are the correct amount of the cost of survey

and office work for the lands mentioned and described in the list of lands hereto annexed, to the extent of said list.

Survey	\$2,425.00
Office work	808.33
	<hr/>
	\$3,233.33

In Testimony Whereof, I have hereunto set my hand and official seal.

(Seal)

W. H. BROWN,
Surveyor-General.

[Endorsed]: Filed, May 1st, 1891. Wm. M. Van Dyke, Clerk.

RESPONDENTS' EXHIBIT "D."

United States Circuit Court, Southern District of California.

UNITED STATES OF AMERICA,	}
v.	
SOUTHERN PACIFIC RAILROAD COMPANY.	No. 184.

LIST No. 25.

F.	(4-207 a.)	T. C. W. C. E.
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DEPARTMENT OF THE INTERIOR,
General Land Office,

Washington, D. C., November, 1890.

I, Lewis A. Groff, Commissioner of the General Land Office, do hereby certify, that the annexed copy of list numbered 25, of lands selected by the Southern Pacific Railroad Company, within the indemnity limits of the

grant made by the 23rd section of the Act of Congress, approved March 3, 1871, on account of the line known as the branch line of said Southern Pacific Railroad Company, which lands are situate in the *Los Angeles, California, land district*, together with the designation of losses stated as a basis for such selections, also, supplemental list of losses, are true and literal exemplifications of the originals on file in this office, but said list has not been examined and approved by this office.

In Testimony Whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

(Seal) LEWIS A. GROFF,
14,514 b-1 m. Commissioner of General Land Office.

(Indemnity List No. 25, Los Angeles Branch Line.)

OFFICE OF THE SOUTHERN PACIFIC RAILROAD }
COMPANY,
San Francisco, California. }

I, Joseph L. Wilcutt, Secretary of the Southern Pacific Railroad Company, do hereby certify, that Jerome Madden was appointed Land Agent of the said Southern Pacific Railroad Company, by the Board of Directors of said company, at a meeting held on the tenth (10th) day of May, A. D. 1876, and that since that

time he has been continuously, and is now the Land Agent of the said Southern Pacific Railroad Company.

In Testimony Whereof, I have hereunto set my hand, and affixed the corporate seal
(Seal.) of the said Southern Pacific Railroad Company, the 28th day of September,
A. D. 1887.

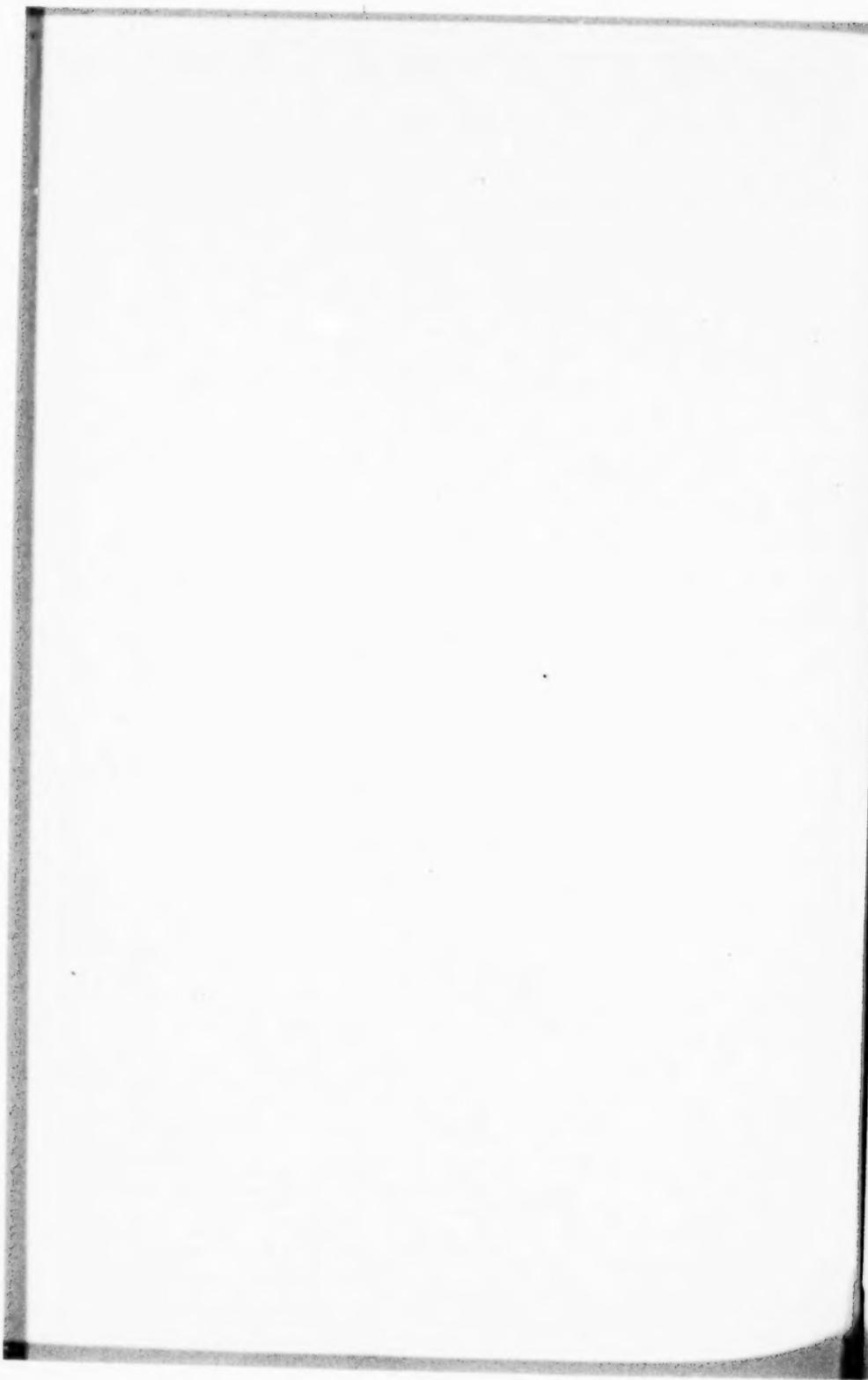
JOSEPH L. WILCUTT,
Secretary of the Southern Pacific Railroad
Company.

List of Lands in the Los Angeles Land District, California, selected by the Southern Pacific Railroad Company of California.

The undersigned, the duly authorized Land Agent of the Southern Pacific Railroad Company of California, under and by virtue of the 3d section of the Act of Congress, approved March 3, 1871, entitled, "An Act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road and for other purposes," and under and by virtue of the Act of Congress, approved July 27, 1866, entitled, "An Act granting lands to aid in the construction of a railroad and telegraph line, from the States of Missouri and Arkansas to the Pacific Coast," and the further Act, approved July 25, 1868, entitled, "An Act to extend the time for the construction of the Southern Pacific Railroad, in the State of California," and the Joint Resolution of Congress, approved June 28, 1870, "concerning the Southern Pacific Railroad

of California," and under and in pursuance of the rules and regulations prescribed by the Commissioner of the General Land Office, hereby makes and files the following list of selections of public lands, claimed by the said company as inuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said Acts of Congress, and the location of the line of route of the railroad and telegraph of said company, being in part for the first, second, third and fourth sections two hundred and twenty-eight 59-100 (228 59-100), miles of the same, commencing at Mojave and ending at Indian Wells (India), which said sections of road and telegraph have been duly accepted by the President of the United States, as provided in the aforesaid Acts and Joint Resolution of Congress. The selections being particularly described as follows:

JEROME MADDEN,
Land Agent of the Southern Pacific Railroad
Company.



J. C. & R.

Railroad List.

North of Base Line and West of San Bernardino Principal Meridian.

List of Selections made at Los Angeles, California,
upon this Indemnity List No. 25.

PART OF SECTION.	No. of SECTION	No. of Town.	No. of Range.	AREA, ACRES	Fees of Register and Receiver.
				100	
Fracl E $\frac{1}{2}$ of NE $\frac{1}{4}$	1	2 N 2 W		8007	
Lots 1, 2, 3, 6 and 7	19	2 N 20W		11272	
All fracl		1 3 N 4 W		64474	
All fracl		3 3 N 4 W		64188	
All fracl		5 "	"	63268	
Fracl N $\frac{1}{2}$	7	"	"	31277	
N $\frac{1}{2}$; N $\frac{1}{2}$ of SE $\frac{1}{4}$	9	"	"	40000	
All	11	"	"	64000	
NW $\frac{1}{4}$ of NE $\frac{1}{4}$; N $\frac{1}{2}$ of NW $\frac{1}{4}$; SW $\frac{1}{4}$ of					
NW $\frac{1}{4}$	13	"	"	16000	
All fracl		1 3 N 5 W		63568	
All fracl		3 "	"	63270	
All fracl		5 "	"	63192	
Fracl N $\frac{1}{2}$	7	"	"	31657	
N $\frac{1}{2}$	9	"	"	32000	
N $\frac{1}{2}$	11	"	"	32000	
All fracl		1 3 N 6 W		63840	
Fracl N $\frac{1}{2}$	3	"	"	31683	
NE $\frac{1}{4}$	6	"	"	16000	
NW $\frac{1}{4}$	7	"	"	16000	
NE $\frac{1}{2}$ NE $\frac{1}{4}$	11	"	"	8000	
Fracl N $\frac{1}{4}$; NW $\frac{1}{4}$					

J. C. & R.

North of Base Line and West of San Bernardino
Principal Meridian.

Tracts within 20 miles of the line of said Railroad in
lieu of which the selected tracts are taken.

PART OF SECTION	NO. OF SECTION	No. of Town.	No. of Range	AREA, ACRES	
					100
S $\frac{1}{2}$ of NE $\frac{1}{4}$	35	1 N 5 W		8000	
All that part of SW $\frac{1}{4}$ in Rancho Muscupiabe					
SE $\frac{1}{4}$ of SW $\frac{1}{4}$	31	1 N 9 W		4000	113.13
All that part of NE $\frac{1}{4}$ in Rancho Muscupiabe	35	1 N 5 W		26.67	
W $\frac{1}{2}$, W $\frac{1}{2}$ of NE $\frac{1}{4}$					
SE $\frac{1}{4}$ of NE $\frac{1}{4}$, SE $\frac{1}{4}$ 15 1 N 4 W				60000	643.74
*Lot 1	7	1 N 11 W		4374	x
All	17	1 N 4 W		64000	x
All that part in Rancho Azusa	29	1 N 10 W		637.93	
All that part in Rancho Cuamonga	35	1 N 7 W		314.12	
N $\frac{1}{2}$; N $\frac{1}{2}$ of SE $\frac{1}{4}$	19	1 N 4 W		40000	
All	21	1 N 4 W		64000	
SW $\frac{1}{4}$ of NE $\frac{1}{4}$; NE $\frac{1}{4}$ of SE $\frac{1}{4}$; W $\frac{1}{2}$ of SE $\frac{1}{4}$	35	1 N 7 W		16000	
All that part in					

J. C. & R.

Railroad List.

North of Base Line and West of San Bernardino
Principal Meridian.

List of Selections made at Los Angeles, California,
upon this Indemnity List No. 25.

PART OF SECTION.	NO. OF SECTION.	NO. OF TOWN.	NO. OF RANGE.	Area, Acres.	100	Fees of Register and Receiver.
Brought Forward,				10369.31		
Lot 2; NW $\frac{1}{4}$ of SW $\frac{1}{4}$; S $\frac{1}{2}$ of SW $\frac{1}{4}$; S $\frac{1}{2}$ of SE $\frac{1}{4}$						
SE $\frac{1}{4}$	113	N 20W		372.66		
All	133	N 20W		640.00		
All	15	"	"	640.00		
All fract	17	"	"	639.37		
E $\frac{1}{2}$	21	"	"	320.00		
All	23	"	"	640.00		
Lots 1, 2, 3 and 4	25	"	"	43.56		
Lots 1, 2, 3 & 4						
N $\frac{1}{2}$ of NE $\frac{1}{4}$ and						
* N $\frac{1}{4}$ of NW $\frac{1}{4}$	27	"	"	217.80		
SW $\frac{1}{4}$ of NE $\frac{1}{4}$						
* & NW $\frac{1}{4}$ of SE $\frac{1}{4}$	13	N 21W		80.00		
SE $\frac{1}{4}$ of NW $\frac{1}{4}$						
& E $\frac{1}{2}$ of SW $\frac{1}{4}$	1	"	"	120.00		
SW $\frac{1}{4}$ of NW $\frac{1}{4}$	1	"	"	40.00		
Lots 1 and 2	3	"	"	36.79		
N $\frac{1}{2}$ of NE $\frac{1}{4}$ and						
Lots 1, 2, 3 & 4	11	"	"	179.66		
All	13	"	"	640.00		
Total						

J. C. & R. 2.

North of Base Line and West of San Bernardino,
Principal Meridian.

Tracts within 20 miles of the line of said Railroad in
lieu of which the Selected Tracts are taken.

PART OF SECTION	NO. OF SECTION	NO. OF TOWN.	NO. OF RANGE	AREA, ACRES	
					100
Brought Forward,				10368	58
All that part in Ran-					
cho Museupiabe	27	1 N 5 W		109	70
All that part in Ran-					
cho Temescal	9	5 N 17 W		228	96
Lot 2	17	1 N 11 W		33	26
All	7	1 N 4 W		640	00
All	3	1 N 5 W		640	00
All	9	" "		640	00
W $\frac{1}{2}$	21	1 N 3 W		320	00
All	35	1 N 4 W		640	00
Lot 14	31	1 N 9 W		4000	
All that part in Ran-					
cho Santa Anita	17	1 N 11 W		165	62
Lot 1	17	" "		12	35
SW $\frac{1}{4}$ of SW $\frac{1}{4}$	13	3 N 4 W		40	00
S $\frac{1}{2}$ of NE $\frac{1}{4}$	3	1 N 12 W		80	00
NE $\frac{1}{4}$ of NE $\frac{1}{4}$ and S					
$\frac{1}{2}$ of NE $\frac{1}{4}$	11	1 N 5 W		120	00
NW $\frac{1}{4}$ of NE $\frac{1}{4}$	11	" "		140	00
All that part in Ran-					
cho Addition to					
San Jose	35	1 N 9 W		37	14
Sum					

3 J. C. & R.

Railroad List.

North of Base Line and West of San Bernardino
Principal Meridian.List of Selections made at Los Angeles, California,
upon this Indemnity List, No. 25.

PART OF SECTION	NO. OF SECTION	NO. OF TOWN.	NO. OF RANGE	AREA, ACRES	FEES OF REGISTER AND RECEIVER
Brought Forward,				20408 78	
All	11	4 N	2W	64000	
All	13	"	"	64000	
All	15	"	"	64000	
All	17	"	"	64000	
All fract.	19	"	"	61892	
All	21	"	"	64000	
All	23	"	"	64000	
All fract.	1	4 N	3W	64006	
All fract.	3	"	"	63780	
All	11	"	"	64000	
All	13	"	"	64000	
All	17	"	"	640	
All fract.*	19	"	"	61909	
All	21	"	"	64000	
All fract.	31	"	"	62744	
All fract.	1	4 N	5W	63963	
All fract.	3	"	"	63908	
All fract.	5	"	"	63520	
All fract.	7	"	"	59512	
All	9	"	"	64000	
All	11	"	"	64000	
All	13	"	"	64000	
All	15	"	"	64000	
All	17	"	"	64000	

J. C. & R. 3.

North of Base Line and West of San Bernardino Principal Meridian.

Tracts within 20 miles of said Railroad, in lieu of which the Selected Tracts are taken.

PART OF SECTION	No. or section	No. of Town.	No. of Range	AREA, ACRES	
					100
Brought Forward,				20,409	88
* All that part in Rancho Cucamonga	19 1 N 7 W			498.42	
Lot 2	35 1 N 5 W			15.05	
W $\frac{1}{2}$ of SW $\frac{1}{4}$	13 1 N 11W			80.00	642.35
All that part in Rancho Santa Anita	15 " "			48.88	
All	31 1 N 10W			640.00	
All	33 " "			640.00	
All	35 " "			640.00	
All that part in Rancho Cucamonga	21 1 N 7 W			503.44	
Lot 8	31 1 N 9 W			22.00	
All that part of NW $\frac{1}{4}$ in Rancho Temescal	31 5 N 17W			26.96	617.00
All that part in Rancho Temescal	7 5 N 17W			64.60	
All	19 1 N 11W			640.00	
All	21 " "			640.00	
All	25 " "			640.00	
All	27 " "			640.00	
All	33 " "			640.00	
All	35 " "			640.00	

J. C. & R.

Railroad List.

North of Base Line and West of San Bernardino
Principal Meridian.

List of Selections made at Los Angeles, California,
upon this Indemnity List, No. 25.

PART OF SECTION.	NO. OF SECTION	NO. OF TOWN.	NO. OF RANGE	AREA		FEES OF REGISTER AND RECEIVER
				ACRES	100	
Brought Forward,				36271.24		
All	24	4 N 5 W		640.00		
All	23	" "		640.00		
All	25	" "		640.00		
All	27	" "		640.00		
All	29	" "		640.00		
All fract.	31	" "		620.90		
All	33	" "		640.00		
All	35	" "		640.00		
All fract.	14	N 6 W		645.62		
All fract.	3	" "		650.99		
All fract.	5	" "		641.08		
All fract.	7	" "		601.60		
All	9	" "		640.00		
All	11	" "		640.00		
All	13	" "		640.00		
All	15	" "		640.00		
All	17	" "		640.00		
All fract.	19	" "		608.32		
All	21	" "		640.00		
All	23	" "		640.00		
All	25	" "		640.00		
All	27	" "		640.00		
All	29	" "		640.00		

J. C. & R. 4.

North of Base Line and West of San Bernardino
Principal Meridian.

Tracts within 20 miles of the line of said Railroad in
lieu of which the Selected Tracts are taken.

PART OF SECTION	NO. OF SECTION	No. of Town	No. of Range	AREA, ACRES	
					100
Brought Forward,				36274	06
All	1	1 N	14 W	640	00
All	7	"	"	640	00
All	13	"	"	640	00
All	17	"	"	640	00
All	19	"	"	640	00
All that part in Ran- cho Ex - Mission					
San Fernando	31	"	"	323	60
All that part in Ran- cho La Canada	21	2 N	13 W	272	32
All that part in Ran- cho San Francisco	1	3 N	17 W	23	30
All	21	1 N	14 W	640	00
All	23	"	"	640	00
All that part in Ran- cho San Anita	23	1 N	11 W	358	02
All that part in Ran- cho Temescal	11	4 N	18 W	203	67
S $\frac{1}{2}$ of NE $\frac{1}{4}$	21	1 N	12 W	80	00
All that part in Ran- cho San Fernando	25	3 N	15 W	308	71
All that part in Ran- cho	30	"	"	640	00

5 J. C. & R.

Railroad List.

North of Base Line and West of San Bernardino Principal Meridian.

List of Selections made at Los Angeles, California, upon this Indemnity List, No. 25.

PART OF SECTION.	NO. OF SECTION	No. of Town.	No. of Range.	AREA, ACRES		Fees of Register and Receiver.
					100	
Brought Forward,				54039	23	
W $\frac{1}{2}$	17	4 N	19W	320	00	
Lots 1 and 2	31	"	"	73	08	
S $\frac{1}{2}$ of NE $\frac{1}{4}$, and SE $\frac{1}{4}$ of NW $\frac{1}{4}$	31	"	"	120	00	
NE $\frac{1}{4}$ of NW $\frac{1}{4}$, and lots 3 and 4	31	"	"	108	98	
* Lot 9, and NE $\frac{1}{4}$ of SE $\frac{1}{4}$	31	"	"	77	51	
SE $\frac{1}{4}$	11	4 N	20W	160	00	
Lots 1, 2 and 5	13	"	"	108	23	
All fractl	19	"	"	631	42	
All fractl	21	"	"	611	16	
E $\frac{1}{2}$	31	"	"	320	00	
Lot 6; SW $\frac{1}{4}$ of SE $\frac{1}{4}$, and S $\frac{1}{2}$ of SW $\frac{1}{4}$	35	"	"	154	86	
S $\frac{1}{2}$	13	4 N	21W	320	00	
E $\frac{1}{2}$ of NE $\frac{1}{4}$, and E $\frac{1}{2}$ of SE $\frac{1}{4}$	15	"	"	160	00	
All	23	"	"	640	00	
All	25	"	"	640	00	
E $\frac{1}{2}$	27	"	"	320	00	
All	35	"	"	640	00	

J. C. & R. 5.

North of Base Line and West of San Bernardino
Principal Meridian.Tracts within 20 miles of the line of said Railroad in
lieu of which the Selected Tracts are taken.

PART OF SECTION	NO. OF SECTION	No. of Town.	No. of Range	AREA, ACRES	
					100
Brought Forward,				54049	23
E $\frac{1}{2}$	9	2 N	15W	320	00
W $\frac{1}{2}$ of SW $\frac{1}{4}$	23	"	"	80	00
SE $\frac{1}{4}$ of SW $\frac{1}{4}$ and					
W $\frac{1}{2}$ of SE $\frac{1}{4}$	23	"	"	120	00
E $\frac{1}{2}$ of SE $\frac{1}{4}$	23	"	"	80	00
All that part of NW $\frac{1}{4}$ in Rancho Temescal					105.90
SW $\frac{1}{4}$ of NW $\frac{1}{4}$	29	5 N	17W	25	90
E $\frac{1}{2}$ of NW $\frac{1}{4}$	9	2 N	15W	80	00
SW $\frac{1}{4}$	9	"	"	160	00
All that part in Rancho Temescal	1	4 N	18W	62	30
SW $\frac{1}{4}$ of NW $\frac{1}{4}$	9	2 N	15W	40	00
All that part in Rancho San Francisco	3	4 N	16W	62	98
All that part in Rancho Temescal	9	4 N	18W	620	38
E $\frac{1}{2}$	13	2 N	15W	320	00
S $\frac{1}{2}$ of NE $\frac{1}{4}$, and S $\frac{1}{2}$ of NW $\frac{1}{4}$	17	4 N	14W	160	00
E $\frac{1}{2}$	15	2 N	15W	320	00
SW $\frac{1}{4}$	15	"	"	160	00

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Railroad List.

North of Base Line and West of San Bernardino
Principal Meridian.List of Selections made at Los Angeles, California,
upon this Indemnity List, No. 25.

PART OF SECTION	NO. OF SECTION	NO. OF TOWN.	NO. OF RANGE	AREA, ACRES	Fees of Register and Receiver
				100	
Brought Forward,				67963.51	
All fract.		1 6 N 20W		638.92	
All	44	" "		640.00	
All	21	" "		640.00	
All	27	" "		640.00	
All	3 7 N 16W			640.00	
All fract.	5 7 N 17W			391.80	
All	9	" "		640.00	
All	11	" "		640.00	
All fract.	5 7 N 18W			370.40	
All fract.	7	" "		642.52	
All	9	" "		640.00	
All	17	" "		640.00	
All	21	" "		640.00	
All	27	" "		640.00	
All fract.	1 7 N 19W			370.36	
All fract.	3	" "		370.08	
All	11	" "		640.00	
All	13	" "		640.00	
N $\frac{1}{2}$ of SE $\frac{1}{4}$ and SE $\frac{1}{4}$ of SE $\frac{1}{4}$					
$\frac{1}{4}$ of SE $\frac{1}{4}$	7 8 N 18W			120.00	
All fract.	9	" "		638.61	
Lot 1	11	" "		1976 } 118.40	
Lots 1, 2, and 3 SW 1st SW 1	19	" "			
				Total	

J. C. & R.

North of Base Line and West of San Bernardino
Principal Meridian.

Tracts within 20 miles of the line of said Railroad in
lieu of which the Selected Tracts are taken.

PART OF SECTION	NO. OF SECTION	No of Town.	No. of Range	AREA, ACRES	
					100
Brought Forward,				67984	63
NW $\frac{1}{4}$ of SE $\frac{1}{4}$ and					
E $\frac{1}{2}$ of SE $\frac{1}{4}$	11	3 N 16W		12000	
All that part in Ran-					
cho San Rafael	11	1 N 14W		50576	
All	3	3 N 16W		64000	
All	25	" "		64000	
All	33	" "		64000	
All	35	" "		64000	
All that part in Ran-					
cho Tujunga	21	2 N 14W		37832	
All	5	3 N 17W		64000	
All	7	" "		64000	
N $\frac{1}{2}$	11	3 N 16W		32000	
NW $\frac{1}{4}$ of NE $\frac{1}{4}$	23	4 N 17W		4000	
All	9	3 N 17W		64000	
All	15	" "		64000	
All	17	" "		64000	
All	19	" "		64000	
All	21	" "		64000	
All that part of E					
$\frac{1}{2}$ in Rancho La					
Liebre	7	10 N 15W		25300	
SW $\frac{1}{4}$ of NW $\frac{1}{4}$ E $\frac{1}{4}$					

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Railroad List.

South of Base Line and West of San Bernardino
Principal Meridian.List of Selections made at Los Angeles, California,
upon this Indemnity List, No. 25.

PART OF SECTION.	NO. OF SECTION	NO. OF TOWN.	NO. OF RANGE	AREA	Fees of Register and Receiver
				ACRES	100
Brought Forward,				85785 00	
SW $\frac{1}{4}$	3	5 S	5 W	160 00	
S $\frac{1}{2}$	5	"	"	320 00	
All	9	"	"	640 00	
S $\frac{1}{2}$	11	"	"	320 00	
W $\frac{1}{2}$	17	5 S	7 W	320 00	
Lots 1, 2, 3, and 4,					
NE $\frac{1}{4}$ of NE $\frac{1}{4}$	19	"	"	156 84	
SW $\frac{1}{4}$	21	"	"	160 00	
N $\frac{1}{2}$ and N $\frac{1}{2}$ of SE $\frac{1}{4}$	33	"	"	400 00	
SW $\frac{1}{4}$ of NE $\frac{1}{4}$, W $\frac{1}{2}$ of SE $\frac{1}{4}$, and SE $\frac{1}{4}$					
of SW $\frac{1}{4}$	13	6 S	3 W	160 00	
All fract.	31	6 S	4 W	641 04	
All fract.	5	6 S	5 W	556 40	
All fract.	7	"	"	645 16	
NW $\frac{1}{4}$ and S $\frac{1}{2}$	15	"	"	480 00	
All fract.	17	"	"	625 57	
Frac. N $\frac{1}{2}$, N $\frac{1}{2}$ of SE $\frac{1}{4}$, fract. N $\frac{1}{2}$ of					
SW $\frac{1}{4}$	19	"	"	482 20	
All	21	"	"	640 00	
N $\frac{1}{2}$, S $\frac{1}{2}$ of SE $\frac{1}{4}$, SW $\frac{1}{4}$	23	"	"	560 00	
All	(28)	"	"	640 00	

J. C. & R. 7.

South of Base Line and West of San Bernardino Principal Meridian.

Tracts within 20 miles of the line of said Railroad in lieu of which the selected tracts are taken.

PART OF SECTION	No. OF SECTION	No. of Town.	No. of Range	AREA, ACRES	
					100
Brought Forward,				85784	11
SE $\frac{1}{4}$	25 4 S 5 W			16000	
N $\frac{1}{2}$	3 1 S 10W			32000	
All	29 1 S 3 W			64000	
S $\frac{1}{2}$	27 " "			32000	
W $\frac{1}{2}$	9 1 S 4 W			32000	
All that part in Rancho San Bernardino	19 " "			15940	
NW $\frac{1}{4}$	3 " "			16000	
E $\frac{1}{2}$	11 " "			32000	
N $\frac{1}{2}$ of NE $\frac{1}{4}$	25 1 S 5 W			8000	400.00
SW $\frac{1}{4}$	11 1 S 4 W			16000	
All	13 " "			64000	
NW $\frac{1}{4}$	11 " "			16000	
E $\frac{1}{2}$, and E $\frac{1}{2}$ of NW $\frac{1}{4}$	29 " "			40000	560.00
All	15 " "			64000	
* All that part in Rancho San Jose	35 1 S 9 W			46400	
Lot 1	1 1 S 10W			1779	481.79
All except lot 1	27 1 S 9 W			62665	
NE $\frac{1}{4}$, and W $\frac{1}{2}$	21 1 S 4 W			48000	
All	17 " "			64000	

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Railroad List.

South of Base Line and West of San Bernardino Principal Meridian.

List of Selections made at Los Angeles, California, upon this Indemnity List, No. 25.

PART OF SECTION.	NO. OF SECTION.	NO. OF TOWNSHIP.	NO. OF RANGE.	Area, Hectares.	Fees of Register and Receiver.
				100	
Brought Forward,				9777111	
All	25	7 S	1W	64000	
All	27	" "	"	64000	
All fractl	33	" "	"	63917	
All	35	" "	"	64000	
All fractl	3	7 S	3W	54880	
Lots 1, 2 and 3	5	" "	"	7898	
Lot 1	7	" "	"	3088	
Lot 2	7	7 S	8 E	2540	
All fractl	1	8 S	1W	62080	

South of Base Line and East of San Bernardino Principal Meridian.

S $\frac{1}{2}$ (fractl)	19	6 S	1 E	32188
W $\frac{1}{2}$	27	" "	"	32000
All	29	" "	"	64000
All fractl	5	7 S	"	65460
E $\frac{1}{2}$ of NE $\frac{1}{4}$, E $\frac{1}{2}$ of SE $\frac{1}{2}$ and W $\frac{1}{2}$	13	" "	"	48000
All fractl	19	" "	"	64992
All	21	" "	"	64000
SE $\frac{1}{4}$	23	" "	"	16000
All	67	"	"	

J. C. & R. 8

South of Base Line and West of San Bernardino
Principal Meridian.

Tracts within 20 miles of the line of said Railroad in
lieu of which the Selected Tracts are taken.

PART OF SECTION	No. of SECTION	No. of Town.	No. of Range	AREA, ACRES	
					100
Brought Forward,				97767	18
All	3	1 S 7 W		64000	
All	5	" "		64000	
All	9	" "		64000	
All	31	" "		64000	
NW $\frac{1}{4}$ of NE $\frac{1}{4}$, NW					
— $\frac{1}{4}$, S $\frac{1}{2}$		9 1 S 9 W		52000	547.61
Lot 4	19	1 S 13W		2761	
E $\frac{1}{2}$ of NE $\frac{1}{4}$	17	1 S 8 W		8000	
Lot 1	31	1 S 13W		2880	
Lot 2	31	" "		2897	
W $\frac{1}{2}$ of NE $\frac{1}{4}$, SE $\frac{1}{4}$					
W $\frac{1}{2}$		17 1 S 8 W		56000	
All that part of					
E $\frac{1}{2}$ of NE $\frac{1}{4}$, in					620,00
Rancho La Brea	9	1 S 14W		2000	
SW $\frac{1}{4}$ of SW $\frac{1}{4}$	35	1 S 10W		4000	
E $\frac{1}{2}$	31	1 S 9 W		32000	
W $\frac{1}{2}$	31	" "		32000	
All	19	1 S 10W		64000	
All that part in					
Rancho San					
Jose and addi-					
Grazing Lots					

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Railroad List.

South of Base Line and East of San Bernardino Principal Meridian.

List of Selections made at Los Angeles, California,
upon Indemnity List No. 25.

PART OF SECTION.	NO. OF SECTION.	No. of Town.	No. of Range.	AREA, ACRES		Fees of Register and Receiver.
				8	10	
Brought forward				109859	20	
*E. $\frac{1}{2}$	9	8 S	1 E	320	00	

North of Base Line and West of San Bernardino
Principal Meridian.

†All	1	4 N	20W	756	84	
‡SW $\frac{1}{4}$ and N $\frac{1}{2}$	11	"	"	480	00	
				1114	16 04	\$1393 00

* 1—87.

† 43—151.

‡ 43—154.

South of Base Line and West of San Bernardino
Principal Meridian. J. C. & R. 9.

Tracts within 20 miles of the line of said Railroad
in lieu of which the selected tracts are taken.

PART OF SECTION	No. OF SECTION	No. OF TOWN.	No. OF Range	AREA, ACRES	
				100	
Brought Forward,				109859	68
S $\frac{1}{2}$		23 2 S 2 W		320	00

North of Base Line, and West of San Bernardino
Principal Meridian.

All that part in Rancho Temes- cal and San Fran- cisco	21 4 N 18W	636 77	756 77
NE $\frac{1}{4}$ of NE $\frac{1}{4}$ and S			
$\frac{1}{2}$ of NE $\frac{1}{4}$	19 5 N 17W	120 00	
NW $\frac{1}{4}$ and S $\frac{1}{2}$	19 " "	480 00	
Total,		111416 45	

STATE OF CALIFORNIA,
City and County of San Francisco. } ss.

Indemnity List, No. 25, Los Angeles Branch Line.

I, Jerome Madden, being duly sworn, depose and say: that I am the Land Agent of the Southern Pacific Railroad Company; that the foregoing list of lands which I hereby select is a correct list of a portion of the public lands claimed by the said Southern Pacific Railroad Company as inuring to it, to aid in the construction of the railroad of said company, from Mojave to Indian Wells (India), for which a grant of lands was made by the Acts of Congress, approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, as aforesaid; that the said lands are vacant, unappropriated, and are not interdicted mineral nor reserved lands, and are of the character contemplated by the grant, being within the limits of the exterior ten (10) miles, indemnity belt *miles* on each side of the line of route for a continuous distance of two hundred and twenty-eight 59-100 (228.59) miles, being for the First, Second, Third and Fourth sections of said road, starting from a point in N. E. $\frac{1}{4}$, Sec. 17, T. 11 N., R. 12 W., S. B. B. & M., and ending at a point in S.W. $\frac{1}{4}$ Sec. 24, T. 5 S., R. 7 E., S. B. B. & M., and that the specific losses for which indemnity is claimed are truly set forth and described in said list, and that said losses have not heretofore been indemnified in any manner.

JEROME MADDEN. (Seal).

Sworn to and subscribed before me this 28th day of September, 1887.

Witness my hand and official seal.

() HOLLAND SMITH,

Notary Public in and for the City and
County of San Francisco, State of California.
(Seal)

UNITED STATES LAND OFFICE,

Los Angeles, Cal., Oct. 3d, 1887.

We hereby certify, that we have carefully and critically examined the foregoing list of lands claimed by the Southern Pacific Railroad Company, under the grant to the said Southern Pacific Railroad Company, by Acts of Congress, approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, above mentioned, and selected by Jerome Madden, the duly authorized agent; and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify, that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limit of the exterior ten (10) miles indemnity belt *miles* on each side; and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands, nor claimed as swamp lands; nor is there any homestead, pre-emption, State, or other valid claim to any portion of said lands on file or record in this office.

We further certify, that the foregoing list shows an assessment of the fees payable to us allowed by the

Act of Congress, approved July 1, 1864, and contemplated by the circular of instructions dated January 24, 1867, addressed by the Commissioner of the General Land Office to registers and receivers of the United States Land Offices; and that the said company have paid to the undersigned, the receiver, the full sum of thirteen hundred and ninety-three dollars (\$1393.00) in full payment and discharge of said fees.

J. D. BETHUNE,

Register.

I. H. POLK,

Receiver.

San Francisco, California, Septr. 28th, 1887.

In presenting with this list of selections a list of tracts lying within 20 miles of the Southern Pacific Railroad of California, lost to the company, and in lieu of which the selections are made, the said company respectfully claim that it is not required by law to specify lost land when selecting indemnity, because the grant to said company by Congress is of a quantity of 12,800 acres of land per mile of road, and the fact is notorious that the company has not received patents for one half as much land as is due it under the orders of the President of the United States accepting its railroad according to law.

The company also pays the expenses of surveying these lands under protest, because it claims to be exempted from such payment by provisions of the said grant of lands to it by Congress.

JEROME MADDEN,
Land Agent So. Pac. R. R. Co.

DUPPLICATE.

The Depositor will send this, by the first mail, to the Commissioner of Patents, if the deposit is on account of Patent Fees; to the Commissioner of Internal Revenue, if on account of Internal Revenue; to the Treasurer U. S., if on account of Semi-annual Duty; to the Commissioner of the General Land Office, if on account of Surveys of Public Lands.

(Form 1—National Banks.)

THE NATIONAL BANK OF THE REPUBLIC.

Washington, D. C., Jany 19, 1889.

No. 1436.

I certify, that the Southern Pacific R. R. Co. has this day deposited to the credit of the Treasurer of the United States twenty-one dollars, on account of the expense of conveying the lands located at the Land Office at Los Angeles, Cal., on Indemnity List No. 25, for which I have signed triplicate receipts.

CHAS. S. BRADLEY,

\$21.

Cashier.

United States Surveyor-General's Office,)
San Francisco, California, September 29th, 1887.)

I, R. P. Hammond, Jr., Surveyor-General for the United States, in and for the State of California, hereby report and certify, that the Southern Pacific Railroad Company has this day filed with me at San Francisco, a duplicate certificate of deposit No. 103, dated September 29th, 1887, to the credit of the United States, showing that the sum of \$3,760.29 has been deposited as cost of survey, and \$1,253.43 for office work, and that the said sums are the correct amount of the cost of survey and office work for the lands mentioned and described in the list of lands hereto annexed, to the extent of said list.

Survey.....	\$3,760.29
Office Work.....	1,253.43
	<hr/>
	\$5,013.72

In Testimony Whereof, I have hereunto set my hand and official seal.

(Seal.)

R. P. HAMMOND, JR.,
Surveyor-General.

Form 1707.

No. 103. Office of the Assistant Treasurer U. S., }
San Francisco, Cal., Sept. 29, 1887. }

DUPLICATE.
To be forwarded to the
Commissioner of the
General Land Office.

I certify, that Jerome Madden, San Francisco, Cal., this day deposited to the credit of the Treasurer of the United States five thousand and thirteen 72-100 dollars on account of List No. 25, Lands selected by the S. P. R. R. Co., Indemnity Limits, Branch Line, Los Angeles Dist., Cala. Survey P., \$3,760.29; O. W. and Sta., \$1,253.43, for which I have signed triplicate receipts.

S. H. BROOKS,

Assistant Treasurer U. S.

\$5,013.72.

1888 104,519. Cu Br.
of Base Line and of Meridian.
Tracts within 20 miles of the line of said railroad in
lieu of which the selected tracts are taken.

PART OF SECTION	NO. OF SECTION	NO. OF TOWN.	NO. OF RANGE	AREA, ACRES	Remarks
				100	

Land Department So. Pac. R. R. Co.

San Francisco, Cal., June 30th, 1888.

Correction as to certain lost lands in lieu of which indemnity was selected in S. P. R. R. Co.'s Indemnity, Los Ang.

Los Angeles—List No. 25, Branch Line, Oct. 3d, 1887.

Note—For convenient reference the corrections are made on the same page and on the same line in which the entries occur in the original list.

(1) Railroad List.

North of Base and West of San Bernardino Principal Meridian.

List of Selections made at Los Angeles, California, upon Indemnity List No. 25.

PART OF SECTION	No. of Sections	No. of Townships	No. of Range	AREA, ACRES	Fees of
					100 Register and Receiver
All Fracl.		13	N 4 W	644 74	

190 SOUTHERN PACIFIC RAILROAD CO., ET AL.,

North of Base Line and West of San Bernardino
Principal Meridian.

Tracts within 20 miles of the line of said Railroad in
lieu of which the selected tracts are taken.

PART OF SECTION	NO. OF SECTION	No. of Town.	No. of Range	AREA, ACRES
				100
W $\frac{1}{2}$ W $\frac{1}{2}$ of NE $\frac{1}{4}$;				
SE $\frac{1}{4}$ of NE $\frac{1}{4}$; SE $\frac{1}{4}$ 15 1 N 4 W				60000
*Lot 1		7 1 N 11 W		43 74
				643 74

* Note.—This tract, Lot 1, Sec. 7, T. 1 N., R. 11 W.,
S. B. M., heretofore used as a basis for indemnity
selection in S. P. R. R. Co.'s Los Angeles Indemnity
List No. 19.

Substitute the following tract for Lot 1, Sec. 7, T. 1
N., R. 11 W., S. B. M., noted in red above, viz.:

NE $\frac{1}{4}$ of NE $\frac{1}{4}$	1 4 N 17 W	40 00
--------------------------------------	------------	-------

(2)

Railroad List.

.....of Base Line and of Meridian.
 List of Selections made at California,
 upon Indemnity.
 List No.

PART OF SECTION	No. of SECTION	No. of Town.	No. of Range	AREA		Fees of Register and Receiver	Remarks
				ACRES	100		

No correction on folio 1.

192 SOUTHERN PACIFIC RAILROAD CO., ET AL.,

..... of Base Line and of Meridian.
 Tracts within 20 miles of the line of said Railroad, in
 lieu of which the selected tracts are taken.

PART OF SECTION	No. of SECTION	No. of Town	No. of Range	AREA		Fees of Register and Receiver	Remarks
				ACRES	10		

No correction on folio 2.

Railroad List.

(3) North of Base Line and West of San Bernardino Principal Meridian. List of Selections made at Los Angeles, California, upon Indemnity List No. 25.

PART OF SECTION	No. of SECTION	No. of Town	No. of Range	AREA, ACRES		Fees of Register and Receiver	Remarks
				100	10		
All	11	4 N	2 W	640	000		
All Fracl.	19	4 N	5 W	610	12		

North of Base Line and West of San Bernardino Principal Meridian.

Tracts within 20 miles of the line of said Railroad in lieu of which the selected tracts are taken.

PART OF SECTION	No. OF SECTION.	No. OF TOWN.	No. OF Range	AREA, ACRES	
				100	
All that part in Ran-					
echo Cucamonga.	19 1 N	7 N		498.42	
Lot 2.	35 1 N	5 W		15.05	
*W $\frac{1}{2}$ of SW $\frac{1}{4}$.	13 1 N	11 W		80.00	
All that part in Ran-					
echo Santa Anita.	15 "	"		48.88	
					—
				642.35	

*Note.—This tract W $\frac{1}{2}$ of SW $\frac{1}{4}$ of Sec. 13 T. 1 N., R. 11 W., S. B. M., heretofore designated as lost land, in lieu of which indemnity was selected in S. P. R. R. Co.'s Los Angeles Indemnity List No. 19.

Substitute the following tract for the W $\frac{1}{2}$ of SW $\frac{1}{4}$ Sec. 13, T. 1 N., R. 11 W., S. B. M. Noted in red above, viz:

S $\frac{1}{2}$ of NE $\frac{1}{4}$.	1 4 N 17 W	8000
All that part in Ran-		
echo San Fernando.	1 12 N 15 W	409.91
NW $\frac{1}{4}$, NW $\frac{1}{4}$ of		
NE $\frac{1}{4}$.	21 1 N 2 W	200.00
		—
		609.91

[†]The number of the Range here is wrong, it was intended for and should be changed to R. 12 W., S. B. M.

Railroad List.

.....of Base Line and of Meridian.
 List of Selections made at California upon
 Indemnity List No.....

PART OF SECTION.	NO. OF SECTION	No. of Town.	No. of Range	AREA		Fees of Register and Receiver	Remarks
				ACRES	100		

No corrections on folios 4, 5 and 6.

..... of Base Line and of Meridian.
 Tracts within 20 miles of the line of said railroad in
 lieu of which the selected tracts are taken.

PART OF SECTION.	NO. OF SECTION	No. of Town.	No. of Range	AREA, ACRES		Remarks
				ACRES	100	

No corrections on folios 4, 5 and 6.

Railroad List.

(7) South of Base Line and West of San Bernardino
 Principal Meridian.

List of Selections made at Los Angeles, California,
 upon Indemnity List No. 25.

PART OF SECTION.	NO. OF SECTION	No. of Town.	No. of Range	AREA		Fees of Register and Receiver	REMARKS
				ACRES	100		
NW $\frac{1}{4}$ and SW $\frac{1}{2}$	15	6 S	5 W	480.00			

South of Base Line and West of San Bernardino Principal Meridian.

Tracts within twenty miles of the line of said Railroad in lieu of which the selected tracts are taken.

PART OF SECTION.	NO. OF SECTION	No. of Town.	No. of Range	AREA, ACRES	
					100
All that part in Rancho San Jose		35	T S 9 W	464 00	
Lot 1		1	T S 10W	17 79	
				481 79	

*NOTE—This tract, Lot 1, Sec. 1, T. 1 S., R. 10 W., S. B. M., heretofore designated as lost land in lieu of which indemnity was selected in S. P. R. R. Co's Los Angeles Indemnity List No. 9.

Substitute the following tract for Lot 1, Sec. 1, T. 1 S., R. 10 W., S. B. M., noted in red above, viz:

All that part of SW					
1 of SW 4 in Ran-					
cho San Francis-					
quito	17	1 S 11W		20 84	

To the Commissioner of the General Land Office:

I request and authorize, that the description of land surrendered in lieu of selection by the Southern Pacific Railroad Company, of California, on Los Angeles

Indemnity List No. 25, be corrected as indicated upon this list.

Washington, D. C., Sept. 12, 1888.

HENRY BEARD,
Attorney-in-fact of So. Pac. R. R. Co. of
Cal. (Seal)

[Endorsed]: Filed May 1st, 1891. Wm. M. Van Dyke, Clerk.

United States Circuit Court, Ninth Circuit, Southern District of California.

(Respondent's Exhibit "C," 2, U. S. of A. v. S. P. R. R. Co., No. 184.)

F. (4—207 a.) T. C.
W. C. E.

DEPARTMENT OF THE INTERIOR.

General Land Office,

Washington, D. C., November 12, 1890.

I, Lewis A. Groff, Commissioner of the General Land Office, do hereby certify, that the annexed copy of a letter to the Commissioner of the General Land Office, January 19, 1889, by Henry Beard, as attorney for Southern Pacific Railroad Company, also, copy of certificate of deposit, numbered 1431, The National Bank of the Republic, of Washington, D. C., dated January 19, 1889, by said railroad company, of twelve dollars and fifty cents, on account of conveying the lands located at the Los Angeles Land Office, State of

California, list number 21, are true and literal exemplification of the originals now on file in this office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name, and caused the seal of
(Seal) this office to be affixed, at the City of Washington, on the day and year above written.

LEWIS A. GROFF,
Commissioner of General Land Office.

14514 b—1 m.

Washington, D. C., January 19, 1889.

To the Honorable Commissioner of the General Land Office:

Sir: On September 24, 1888, I had the honor to apply for an estimate of the cost of patenting to the Southern Pacific Railroad Company of California the lands located on the 16th Jany., 1885, at the United States Land Office at Los Angeles, Cala., upon list No. 21, Granted, amounting to 71,851 86-100 acres, under the Act of Congress, approved March 3d, 1871.

Upon the 14th of November, 1888, I received your letter of the 12th of the same month reciting the requirement that these costs should be paid "before patent can issue," but declining to undertake to furnish me with an estimate of such costs, and informing me that "the conveying fees are assessed at the rate of thirty cents per hundred words (fifteen for writing and fifteen for recording the patent) and one dollar for the seal of the office."

Adopting this basis, the cost of preparing a patent upon the above-named list is ascertained to be

\$12.50, and said railroad company has, therefore, deposited that amount in the Treasury of the United States, as evidenced by certificate of deposit, number 1431, of the National Bank of the Republic, of Washington, D. C., dated on the 19th of January, 1889.

The original of said certificate has been transmitted to the Secretary of the Treasury, and the duplicate thereof is herewith enclosed, to be filed with said list.

Should the amount so deposited be found insufficient, said company is prepared, on notice, to deposit any further amount necessary.

But if the usual course of consolidating the lands on several lists in one patent is adopted in your office, when a patent for the land finally issues, it will be found that the aggregate of this and similar deposits now made will be far in excess of the fees legally due, because the estimates now made cover, as to each list, the cost of the seal of the office and the introductory and concluding matter in the patent.

Very respectfully,

HENRY BEARD,

Attorney for Southern Pacific R. R. Co. of Cal.

DUPPLICATE.

The Depositor will send this by the first mail to the Commissioner of Patents, if the deposit is on account of Patent Fees; to the Commissioner of Internal Revenue, if on account of Internal Revenue; to the Treasurer U. S., if on account of Semi-Annual Duty; to the Commissioner of the General Land Office, if on account of Surveys of Public Lands.

(Form 1—National Banks.)

THE NATIONAL BANK OF THE
REPUBLIC.

Washington, D. C., Jany 19, 1889.
No. 1,431.

I certify that The Southern Pacific R. R. Co. has this day deposited to the credit of the Treasurer of the United States, Twelve 50-100 Dollars, on account of the expense of conveying the lands located at the land office at Los Angeles, Cal., on granted list No. 21, for which I have signed triplicate receipts.

\$12.50. CHAS. S. BRADLEY,
Cashier.

[Endorsed]: Filed May 1st, 1891. Wm. M. Van
Dyke, Clerk.

U. S. v. S. P. et als. 184. Respts. Exhibit "E."
(attached to amended answer to amended bill)

(4-83-250.)

Date.

THIS INDENTURE, made and entered into this the first day of April, A. D. 1875, by and between the Southern Pacific Railroad Company, a railroad corporation, duly incorporated and organized under and in pursuance of the laws of the State of California, party of the first part, and D. O. Mills and Lloyd Tevis, of the City and County of San Francisco, California, parties of the second part, Witnesseth: that

Purpose of
Mortgage.

WHEREAS, the said party of the first part desires to complete the construction and equipment of its railroad and telegraph lines in the State of California, running from the City of San Francisco in a southerly and south-easterly direction by way of Carnadero Junction, Salinas Valley and Polonio Pass to the Colorado River, at or near the "Needles;" also from Carnadero Junction to San Benito; also from Los Gatos Creek via Goshen, to the junction with the first mentioned line between Poso Creek and Kern River; also from the junction near Tehachapi Pass via Los Angeles to the Texas Pacific Railroad near Fort Yuma; and also from Los Angeles to Wilmington, on San Pedro Bay, aggregating eleven hundred and fifty miles of railroad and telegraph line, and to cancel its present bonded indebted-

Route of
Railroad.

ness for construction, secured by a mortgage heretofore made and bearing date November first, eighteen hundred and seventy, and to that end intends and is about to issue its first mortgage bonds upon said railroad and telegraph line, and its rolling stock, fixtures and franchises, and also upon the lands granted to it by Congress, by the Act of Congress, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," approved July twenty-seventh, eighteen hundred and sixty-six, and the act entitled "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," approved March third, eighteen hundred and seventy-one, not sold or otherwise disposed of prior to the execution of this mortgage, aggregating as near as can be estimated eleven millions of acres; and

Property
mortgaged
includes
Land
Grants.

WHEREAS, heretofore, to-wit: on the nineteenth day of December, A. D. eighteen hundred and seventy-four, the Board of Directors of said company, pursuant to the statute of the State of California, in such cases made and provided, at a meeting of said board at which all the members thereof were present, did, by a resolution to that effect, which was unanimously adopted and passed, determine and direct that first mortgage bonds upon said

Board of
Directors
authorize
mortgage
to be made.

Description
of
Bonds.

railroad and telegraph line, its rolling stock, fixtures and franchises, and upon said hereinbefore described lands, to the number of forty-eight thousand (forty-four thousand of which shall be for one thousand dollars each, and four thousand of which shall be for the sum of five hundred dollars each), in seven series, to be designated by the letters of the alphabet, commencing with the letter "A," and followed by the succeeding letters in regular order to the letter "G," both inclusive, be prepared, executed and issued by the President and Secretary of said company. Series "A" to consist of thirteen thousand bonds for one thousand dollars each, numbered from one to thirteen thousand, both inclusive, and four thousand bonds for five hundred dollars each, numbered from thirteen thousand and one to seventeen thousand, both inclusive. Series "B" to "F," both inclusive, consisting each of five thousand bonds, for one thousand dollars each, numbered from seventeen thousand and one to forty-two thousand, both inclusive, and Series "G," consisting of six thousand bonds for one thousand dollars each, numbered from forty-two thousand and one to forty-eight thousand, both inclusive. All of said bonds being payable thirty years after date, with interest at the rate of six per centum per annum, payable semi-annually. The said Series "A" to bear date April first, eighteen

hundred and seventy-five, and the said several succeeding series to bear such dates respectively as the Board of Directors of said company may direct; all of said bonds aggregating the sum of forty-six millions of dollars; and

WHEREAS, the said Board of Directors, at the meeting aforesaid, and in the manner and form, and by the vote aforesaid, did further resolve, that the said Series "A," of said bonds, should be executed and issued in substantially the following form, and that the succeeding series of said bonds should be in a similar form, with the necessary changes to conform to said resolutions or orders, which form is as follows, to-wit:

THE UNITED STATES OF AMERICA:

\$1,000 In United States	In United States
States	\$1,000
Gold Coin (Vignette.)	Gold Coin
FIRST MORTGAGE BOND.	

No..... Series "A."

THE SOUTHERN PACIFIC RAILROAD COMPANY
(OF CALIFORNIA).

For value received, promises to pay one thousand dollars to Mark Hopkins, or bearer, in the City of New York, thirty years from the date hereof, with interest thereon at the rate of six per centum per annum from said date, payable semi-annually, on the first day of October next ensuing, and on the first day

Form of
Bond.

Rate of
Interest.

of April and October in each year thereafter, in the City of New York, on presentation and surrender of the respective coupons hereunto annexed, both principal and interest payable in United States Gold Coin at par, dollar for dollar.

This bond is one of Series "A" of the first mortgage bonds issued, and to be issued by the said Southern Pacific *Pacific* Railroad Company in seven series, designated respectively by the letters of the alphabet, commencing with "A" and ending with "G," both inclusive. Series "A," consisting of thirteen thousand bonds for one thousand dollars each, numbered from one to thirteen thousand, both inclusive, and four thousand bonds for five hundred dollars each, numbered from thirteen thousand and one to seventeen thousand, both inclusive. Series "B" to "F," both inclusive, consisting each of five thousand bonds for one thousand dollars each, numbered from seventeen thousand and one to forty-two thousand, both inclusive, and Series "G," consisting of six thousand bonds for one thousand dollars each, numbered from forty-two thousand and one to forty-eight thousand, both inclusive; all of said bonds being payable thirty years after their respective date, with the interest at the rate of six per centum per annum, payable semi-annually.

The said Series "A" to bear date April first, eighteen hundred and seventy-five, and the

Dates. said several succeeding series to bear such dates respectively as the Board of Directors of said Company may direct; all of said bonds aggregating the sum of forty-six millions of dollars.

No prefer-
ence by
reason of
priority.

The holder of any such bonds is to have no preference over any other holder of any of said bonds by reason of any priority in date, or the time of issuing the same or otherwise.

How se-
cured.

All of said bonds are secured by a mortgage or deed of trust, bearing even date with the bonds constituting Series "A," duly executed by said company to D. O. Mills and Lloyd Tevis, San Francisco, California, as Trustees, upon its railroad and telegraph lines in the State of California, running from the City of San Francisco in a southerly and southeasterly direction, by way of Carnadero Junction, Salinas Valley and Polonio Pass to the Colorado river, at or near the "Needles;" also from Carnadero Junction to San Benito; also from Los Gatos Creek via Goshen to the junction with the first mentioned line, between Posa creek and Kern river; also from the junction near Tehachapi Pass, via Los Angeles, to the Texas Pacific Railroad near Fort Yuma, and also from Los Angeles to Wilmington on San Pedro Bay, aggregating eleven hundred and fifty miles of railroad and telegraph line, with all the rolling stock,

stations, fixtures and franchises for the permanent use thereof, and the appurtenances thereto, now owned or held, or that may be hereafter required by said company for the permanent use of said railroad and telegraph lines.

Includes
Lands.

And also upon all the lands granted to said company by the Congress of the United States, to aid it in the construction of said railroad and telegraph lines, not sold or otherwise disposed of, prior to the execution of said mortgage, aggregating, as near as can be estimated, eleven millions of acres.

IN TESTIMONY WHEREOF, the Southern Pacific Railroad Company has caused its corporate seal to be hereunto affixed, and these presents to be signed by its President and Secretary, this first day of April, in the year of our Lord one thousand eight hundred and seventy-five.

..... President.

..... Secretary.

AND, WHEREAS, the said Board of Directors, at the meeting aforesaid, and in the manner and form, and by the vote aforesaid, did further direct that to each of said bonds there should be attached sixty interest coupons, numbered respectively from one to sixty, inclusive, substantially in the following form, to-wit:

*

\$30. Series A.

**SOUTHERN PACIFIC RAILROAD COMPANY
of California.**

Coupon Bond No..... No.....
THIRTY DOLLARS.

Interest due.....

Payable in the City of New York in
United States Gold Coin.

Secretary.

*

with such changes in amount in the body and in the coupon as shall be necessary to conform to the order of the Board of Directors aforesaid, in regard to the several amounts or sums which are payable in each class of bonds; and

WHEREAS, by an Act of Congress of the United States of America, approved on the twenty-seventh day of July, A. D. eighteen hundred and sixty-six, entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," there was granted to the said Southern Pacific Railroad Company, party of the first part, a large body of public lands of the United States, to wit: Every alternate section of public lands, designated by odd numbers, to the amount of ten alternate sections per mile on each side of the railroad and

telegraph line of said company, running from the bay of San Francisco to the south-easterly line of the State of California, being about six hundred and thirty-six miles, not sold, reserved, granted, or otherwise appropriated, and free from pre-emption, homestead, or other claims or rights at the time the line of said road is designated by a plat thereof, filed in the office of the Commissioner of the General Land Office, and such other alternate sections designated by odd numbers as aforesaid, and situated not more than ten miles beyond the limits of the said first alternate sections which may be selected by said company in lieu of any of the sections aforesaid which may have been sold, granted, reserved, pre-empted, occupied as homesteads, or otherwise disposed of, or to which other rights may have attached, as provided in the Act of Congress aforesaid for the purpose of aiding in the construction of the railroad and telegraph line of the said party of the first part; and

WHEREAS, By an Act of Congress of the United States of America, approved on the third day of March, eighteen hundred and seventy-one, entitled, "An Act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," there was granted to the said Southern Pacific Railroad Company the

Act of
Congress
authoriz-
ing the
Company
to con-
struct
lines to

connect
with Texas
Pacific
Railroad
and At-
lantic and
Pacific
Railroad

authority to construct a line of railroad from a point near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad, at or near the Colorado River, with the same rights, land grants and privileges, and subject to the same limitations, restrictions and conditions as were granted to and imposed upon the said Southern Pacific Railroad Company of California, by the aforesaid Act of July twenty-seventh, eighteen hundred and sixty-six, before recited, subject to the rights, present and prospective, of the Atlantic and Pacific Railroad Company, which said last line of road is of the length of three hundred and fifty-six and seven one-hundredth miles; and

WHEREAS, the said Board of Directors at the meeting aforesaid, and in the manner and form, and by the vote aforesaid, did further direct that, to secure the payment of said bonds, a first mortgage upon said road and its rolling stock, stations, fixtures, right of way and franchises, and the lands aforesaid granted by said Acts of Congress, not sold or otherwise disposed of, or contracted to be sold, as shown by the books of said company, should be executed under the corporate seal of said company, and be signed by its President and Secretary, to D. O. Mills and Lloyd Tevis, both of the City and County of San Francisco, State of California, as Trustee for the holders of said bonds; and

Mortgage
to be exe-
cuted to
Trustees.

Sinking
Fund
\$100,000
yearly,
commenc-
ing 1892.

Redemp-
tion of
Bonds.

WHEREAS, said Board of Directors, at the meeting aforesaid, and in the manner and form, and by the vote aforesaid, did further direct that a Sinking Fund should be created for the redemption and payment of said bonds, by setting apart the sum of one hundred thousand dollars of the net income of said road in the year eighteen hundred and eighty-two, and each year thereafter until all of said bonds, principal and interest, shall have been redeemed or paid, in trust, to be loaned out at interest, upon good securities, or otherwise invested under the order and direction of said Board of Directors, or used to redeem said bonds as often as one hundred thousand dollars shall come into the Sinking Fund, in which case notice shall be published in one paper in the City of San Francisco and two papers in New York City, that bonds will be redeemed at a price not exceeding their par value, and inviting bids for the surrender thereof at prices to be named, not exceeding the par value of said bonds; the lowest bids less than par to be accepted, and bonds redeemed to the extent of the money in the sinking fund.

Now, THEREFORE, THIS INDENTURE WITNESSETH, that the said Southern Pacific Railroad Company, for the better securing of the payment of the principal and interest of the said first mortgage bonds, and in consideration also of the sum of one dollar, to it in

Description
of
property
conveyed
to Trus-
tees.

hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, as *granted, bargained, sold and aliened, conveyed and confirmed*, and by these presents doth *grant, bargain, sell, alien, convey and confirm* unto the said parties of the second part, and to their successors duly appointed, for the execution of the trusts herein set forth, the following property now or hereafter constituted, purchased, acquired, held in possession and owned by said company, to-wit: the whole of the railroad and telegraph line of said company, running from the Cty of San Franciseo, in the State of California, in a southerly and southeastern direction, by way of Carnadero Junetion, Salinas Valley and Polonio Pass, to the Colorado River, at or near the "Needles;" also, from Carnadero Junction to San Benito; also, from Los Gatos Creek, via Goshen, to the junction with the first mentioned line between Poso Creek and Kern River; also, from the junction near Tehachapi Pass, via Los Angeles, to the Texas Pacific Railroad near Fort Yuma, and also from Los Angeles to Wilmington, on San Pedro Bay, aggregating eleven hundred and fifty miles of railroad and telegraph lines, including all the rights of way, roadway, track and tracks, together with all the superstructures, depots, depot grounds, station houses, watering-places, workshops, machine-shops, machinery, side

tracks, turn-outs, turn-tables, weighing scales, locomotives, tenders, cars, rolling stock of all kinds, full equipments, fixtures, tools and all other property which may be necessarily or ordinarily used in operating or repairing the said railroad, including all of the said property, which is now or may hereafter, in whole or in part, be constructed or completed, purchased, acquired, held, or owned by the said Company, pertaining to said railroad, and all the corporate rights, privileges and franchises of said Company, pertaining to said road, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging and appertaining, and the reversion and reversions, remainder and remainders, rents, incomes, issues and profits thereof, with all the rights, titles, interests, estate, property, succession, claim and demand, in law or equity, of the said party of the first part, of, in and to the same, or any part and parcel thereof; to have and to hold the above granted and described premises, property and franchises, with the appurtenances, unto the said parties of the second part, and to the survivor of them, and to their successors, duly appointed, upon trust and for the use and benefit of the person or persons, body or bodies, politic or corporate, who shall have become, or be from time to time, holders of the said "first mortgage bonds," or any of them. *Provided*, always

and these presents are upon the express condition that if the said party of the first part, or its successors, shall well and truly pay, or cause or procure to be paid unto the holders, from time to time, of said bonds, and each and every one of them, the said sums of money secured to be paid by the said bonds, and the interest coupons attached thereto, at the places and times, and in the manner set forth in the said bonds, according to the true intent and meaning thereof, then these presents, and all the property, estate, right, franchises and privileges herein and hereby granted and conveyed, shall *cease, determine and be void*. But if *default* shall be made in the payment of the said sums of money specified in said bonds, or in the payment of said interest coupons, or either of them, or any part thereof, and if the same shall remain unpaid for the period of six months from and after the time when the same should have been paid, according to the terms of said bonds, then the said parties of the second part, or either of them, upon the refusal of the other, or their successors in said trust; by themselves, or their agents, or servants, in that behalf, may, upon request of the holder or holders of not less than one-fourth of said bonds, on which the interest or principal shall so be and have so remained in default as aforesaid, enter into and upon and take possession of all, or in their or his discretion, or any part of the said

Proceedings in
event of
default in
payment.

premises and property hereinbefore described, and work and operate the said railroad, and receive the income, receipts and profits thereof, and out of the same pay: *First*, The expense of running and operating the same, including therein such reasonable compensation as they or he may allow to the several persons employed or engaged in the running and superintendence of the same, and a reasonable compensation to the parties of the second part, or their successors, or such of them as shall act in the premises, for their or his care, diligence and responsibility in the premises. *Second*, The expenses of keeping the said road, the appurtenances, the locomotives and the rolling stock thereof in good and sufficient repair, to prevent deterioration in the value thereof, and all other reasonable and proper charges and expenses of the care and management thereof. And, *Third*, Pay, as far as the same will suffice, all interest and principal, if any, which may be due on said bonds; and in case of any deficiency, to apply said receipts, after the payment of all said charges and expenses, to the payment thereof, ratably, without preference of any kind, or the said parties of the second part may in such case foreclose this mortgage, and sell and dispose of, according to law, all the rights, property, privileges, franchises, real and personal, with the appurtenances herein and hereby

granted, or so much thereof as may be necessary, and out of the money arising from such sale, pay: *First*, The costs and charges and expenses of the foreclosure and sale, including therein reasonable counsel fees for conducting said proceedings, to be allowed and fixed by the Court, but not exceeding thirty thousand dollars. *Second*, Any expenses, costs and charges of the execution of the trust previously incurred and remaining unpaid. *Third*, A reasonable compensation to the Trustees, or one of them, who may act, for their or his care, trouble and service in completing the execution of his trust and the distribution of the proceeds of sale to be fixed by the Court, but not exceeding twenty thousand dollars. And, *Fourth*, To distribute the residue of said proceeds among the holders of said bonds, in proportion to their several interests, until all have been paid in full, principal and accrued interests.

Proceeds
from sale
of Depot
Lands,
etc., not
needed for
such pur-
pose, may
be sold and
proceeds
applied to
redemp-
tion of
Bonds.

And the said party of the first part hereby covenants and agrees that if, at any time, any lands now used for depot or shop purposes, or right of way, or water, or any lands not now used, but which may be hereafter used for such purposes, shall, for any cause, cease to be needed or used by said party of the first part for such purposes, the said parties of the second part may sell the same at the price to be agreed upon by the parties of the first and second parts, and apply the money real-

ized from such sale or sales to the redemption of said bonds in the manner hereinafter provided in the case of money realized from the sale of lands granted by the United States to the said party of the first part.

Company
to pay all
taxes,
assess-
ments,
etc., or in
default,
Trustees
may pay
and re-
ceive 7%
interest on
such pay-
ments.

And the said party of the first part hereby agrees and covenants to and with the said parties of the second part, and their successors in said trust, that it will pay all ordinary and extraordinary taxes, assessments, and other public burdens and charges which shall or may be imposed upon the property herein described and hereby mortgaged, and every part thereof, and the said parties of the second part, the survivor of them or their successors in said trust, or any one or more of the holders of said bonds, may in case of default of the said party of the first part in this behalf, pay and discharge the same, and any other lien or incumbrance upon said property, which may in any way, either in law or equity, be or become in effect a charge or lien thereon, prior to these presents, or to which this mortgage may be subject or subordinate, and for all payments thus made the parties so making the same shall be allowed interest thereon at the rate of seven per centum per annum, and such payments, with the interest thereon, shall be and are hereby secured to them by these presents, and declared to be payable and collectable in the

same sort of currency or money wherein they shall have been paid, and the same shall be payable by said party of the first part to said parties of the second part upon demand, in trust for the party or parties paying the same, and may be paid out of the proceeds of the sale of said property and franchises hereinbefore provided.

And the said party of the first part hereby further covenants and agrees to, and with the said parties of the second part, and their successors in said trust, that they will at any and all times hereafter, upon the request of the said parties of the second part, execute, acknowledge and deliver to the said parties of the second part, all and every such further, necessary and reasonable conveyances and assurances of the said premises, or any part thereof, as may by the parties of the second part, or the survivor of them, or his or their successors in the trust hereby created, be reasonably advised or required for more fully carrying into effect the objects of this conveyance, and the said parties of the second part, and their successors in said trust, shall be entitled to receive a just and proper compensation for all services rendered by them in the discharge of said trust, and the same shall be deemed to be secured hereby.

And it is hereby stipulated and agreed, that the said parties of the second part, and their

Will execute any further conveyances required.

Compensation to Trustees.

Agents of
Trustees.

successors in said trust, shall not be responsible for the acts or omissions of any agent or agents employed by him or them, in any manner, in and about the execution of the trust hereby created when such agent or agents are selected with reasonable discretion; or with the approbation, or with the knowledge and without the express disapprobation of said party of the first part, nor shall either of the said parties of the second part be responsible for any act or omission of the other in the execution of said trust.

Convey-
ance of
Land to
Trustees.

AND, THEREFORE, THIS INDENTURE FURTHER WITNESSETH: That the said party of the first part, for the purpose of securing the payment of the sums of money mentioned in said bonds, and the interest thereon, and in consideration of the premises, and also for and in consideration of the sum of one dollar to the said party of the first part in hand paid by the parties of the second part, the receipt whereof is hereby acknowledged, has *granted, bargained, sold, released, enfeoffed, conveyed and confirmed*, and by these presents does *grant, bargain, sell, release, enfeoff, convey and confirm* unto the said parties of the second part, as Trustees, and to their successors and survivor, and their assigns forever;

All and singular, the said several sections of land so as aforesaid granted by said Acts of Congress; and also all the estate, right, title,

interest, claim and demand whatsoever, at law or in equity, of, in, or to the same, or any part or parcel thereof, which the said party of the first part now has, holds, owns, or is entitled to, or hereafter may or shall acquire, have, hold, own, or be or become entitled to by force or virtue of the said Acts of Congress; saving, excepting, and reserving all parts and parcels of said lands which have been sold or contracted to be sold or disposed of heretofore, or which are or shall be included in the right of way of the said railroads and telegraph lines of the said company, as defined and granted by the Acts of Congress aforesaid, or used for the construction or operation thereof, or for the track, yards, depot grounds, buildings or erections thereof.

TO HAVE AND TO HOLD, all and singular the lands hereby granted or intended to be granted, and each and every part and parcel thereof, with the appurtenances thereunto belonging, unto the said parties of the second part, and their successors and survivor, and their assigns forever, as Trustees, for the uses and purposes, and upon the trusts, terms, conditions, and agreements in this indenture set forth and declared.

PROVIDED, always, and these presents are upon the express condition, that if the said party of the first part shall well and truly

Reserved
Lands.

Lands
shall
revert to
and rest in
the S. P.
R. R. if—

pay, or cause to be paid, to the holders of said bonds, and every of them, the principal sums of money therein mentioned, according to the tenor thereof, with the interest thereon, at the times and in the manner hereinbefore provided, according to the true intent and meaning of these presents, then and from thenceforth this indenture and the estate hereby granted shall cease and determine, and all the right, title and interest in any and all property hereby conveyed to the parties of the second part, not then disposed of under the powers hereby conferred, shall revert to and vest in the said party of the first part.

THIS INDENTURE FURTHER WITNESSETH, that these presents, and the said bonds, are made executed and delivered upon the trusts, terms, conditions and agreements following, that is to say: That all the lands herein above conveyed and mortgaged shall be under the sole and exclusive management and control of the said party of the first part, who shall have full power and authority to make contracts for the sale of the same at such price, on such credit or terms of payment, and such other conditions as shall be agreed on by the said parties of the first and second parts, and as shall seem to them best calculated to secure the payment in full of all the bonds issued as hereinbefore provided, until entry or foreclosure by the Trustees, as hereinafter

Land to be
under the
control of
S. P. R. R.

Payments
to be
made to
Trustees.

provided. But no title to any tract of land, contracted to be sold by the said party of the first part, shall be given until the whole of the purchase money of said tract shall be paid to said parties of the second part, or their successors or survivor, in cash or in said bonds, or overdue coupons thereof. And for this purpose it is agreed that the said party of the first part and said Trustees shall cause all such lands, as they shall from time to time become subject to sale, to be carefully examined and surveyed, and shall affix to each tract or parcel such price as in their judgment shall be most judicious, having in view the interests of all parties; and said lands shall be and remain at all times thereafter open for sale to any person who may desire to purchase and pay therefor; the prices being, nevertheless, at all times subject to revision and alteration by the said parties; and the party of the first part may reserve from sale any lands necessary for depot grounds, or other purposes connected with the construction or operation of the said railroad or telegraph.

The purchaser of any such land shall be at liberty to pay for the same in the aforesaid bonds or overdue coupons at par; and when any tract or parcel of said lands shall have been purchased and paid for, either in bonds, coupons or cash, as hereinbefore provided, the same shall be conveyed by the said par-

Land to be
graded,
etc.

Lands
may be
paid for in
Bonds and
overdue
Coupons.

ties of the first and second parts to the purchaser, in fee simple, and shall by such conveyance be absolutely and forever released from any and all lien or incumbrance, for or on account of said bonds, or any other debt or obligation, of the said party of the first part.

Trustees
may con-
vey land
by power
of attorney.

PROVIDED, That for the sake of convenience in making said conveyances, the said Trustees shall have power to act by attorney, duly nominated and appointed by them, jointly, by letter of attorney, which shall be duly acknowledged and recorded in each and all of the counties in which said lands or any part thereof are situated; and all deeds made in their names by such attorney shall have the same force and effect as if made by them in person.

Residence
of such
attorney.

PROVIDED, FURTHER, that the attorney so appointed shall be a resident of the City of San Francisco, in the State of California, and shall reside within convenient reach of the party of the first part.

Trustees
to cancel
Bonds and
Coupons.

The said Trustees shall and will cancel and discharge each and every bond and the coupons thereon, and all overdue coupons, which they may receive in payment for land, or by purchase, by defacing the seal of the corporation, perforating the signature of the President and Secretary, and drawing lines across each of the interest coupons, on receipt thereof; and all bonds and coupons received in

payment for lands, as aforesaid, shall, when so canceled, be delivered to the said party of the first part.

Proceeds
of sales of
lands shall
be applied
to the pur-
chase of
Bonds.

The said Trustees shall apply the proceeds of the sales made by them of lands hereby conveyed, to the sole and exclusive purpose of the payment of the bonds provided for in, and issued in conformity to, the terms of this indenture.

And for such purposes all such avails shall, from time to time, as the same are realized, be used in the purchase of such bonds in the market, to be canceled, so long as purchases thereof can be made at par; and whenever such bonds cannot be purchased at that rate, said Trustees shall advertise for proposals to sell such bonds to them in two newspapers published in the City of New York, and one newspaper published in the City of San Francisco; and after receiving such proposals they shall have power to purchase such bonds at the lowest terms so offered.

The said party of the first part does hereby covenant and agree to pay to the holders of said bonds, respectively, the said principal sums of money therein mentioned and the interest thereof as aforesaid.

If any default shall be made in the payment either of principal or interest on any of said bonds for six months, after demand at the place of payment when the same shall become due, then the said Trustees may on being requested

How
Bonds
shall be
purchased.

In event of default in payments for six months, Trustees may foreclose mortgage and dispose of lands at public auction sufficient to discharge all arrears.

by the holders of at least one hundred thousand dollars of such bonds, *enter into and take possession of* any of the lands above conveyed, and *foreclose this mortgage, and may sell* at public auction *so much of said lands* as may be necessary to discharge all arrears of such interest, and apply the proceeds, after deducting the costs, charges, and expenses of such entry, foreclosure and sale, to the payment of such arrears of interest. If any such *default* shall continue *for one year* from the time of such demand and refusal, the principal sum of all bonds then outstanding shall become due and payable, and the said Trustees may *enter into and take possession* of all the lands above by these presents mortgaged or conveyed, *foreclose this mortgage, and sell* at public auction *all said lands* or so much thereof as may be necessary, first giving at least six months previous notice of the time and place of sale in at least one newspaper published in the City of New York, and in one published in each of the cities of San Francisco, Sacramento, Los Angeles and San Diego; and they shall apply the proceeds thereof, after deducting the costs, charges and expenses of such last-mentioned entry, foreclosure and sale, to the payment of all said bonds then outstanding, and the interest accrued thereon, rendering the surplus, if any there shall be, unto the said party of the first part. In case of any sale upon any such foreclosure or at

any such public auction, the said Trustees shall make, execute and deliver a conveyance of the said lands so sold, which shall convey to the purchasers all the rights and privileges of the said party of the first part, in and to the property so sold, to the same extent as the same shall have been previously enjoyed, and held by the said party of the first part.

Foreclosure proceedings for interest to cease if interest is subsequently paid.

If after any such entry shall be made, or any such foreclosure proceedings shall be commenced, for the satisfying of interest only as above provided, and before the lands are sold thereon, the said party of the first part shall pay and discharge such interest and deliver the coupons therefor to the said Trustees, and pay all the costs, charges and expenses incurred in such entry and foreclosure and the proceedings thereon; then and in every such case the said Trustees shall discontinue their proceedings thereon, and restore to the said party of the first part all of such lands to be held subject to the above conveyance and mortgage, and subject to all the provisions, terms and conditions of these presents, in like manner as if such entry had not been made, nor such foreclosure proceedings commenced. In case a vacancy shall happen in the number of Trustees hereinbefore mentioned as parties of the second part in this indenture, or if one of them shall be temporarily absent, the remaining Trustee shall, while said vacancy or

How
vacancy in
Trustees is
to be
filled.

absence exists, have all the rights; exercise all the powers and discharge all the duties devolving on the said Trustee by said instrument. But as soon as it conveniently may be done, such vacancy shall be filled by the nomination by the remaining Trustee of some proper person to fill such vacancy, which nomination shall be submitted to the Board of Directors of said company, and if approved by them, the person so nominated and approved immediately shall become a Trustee under this instrument. If said nomination is not approved, another person shall be nominated by said remaining Trustee, and in like manner submitted for approval, and so on till three nominations shall have been made. But if three successive nominations shall be made and none of them shall be approved by said Board, said vacancy shall be filled by a committee of three persons, selected, one by said remaining Trustee, one by said Board of Directors, and a third by the two thus selected, and the person appointed Trustee by a majority of the committee shall be and remain a Trustee under this instrument. And the person regularly appointed a Trustee to fill a vacancy in either of the forms above specified, shall from and after his said appointment, and his acceptance of the appointment, become vested with the same estates, powers, rights and interests, and charged with the same

duties and responsibilities as if he had been one of the original Trustees, parties of the second part, named in and executing this instrument; and the prior remaining Trustee may and shall execute such conveyance and instruments as may be proper or necessary to vest the same in such new Trustee jointly with him, or to furnish evidence of such vesting. If at any time either of the said Trustees shall resign his place as Trustee by a proper deed in writing to that effect, and such resignation shall be accepted by the said party of the first part, then, and in every such case, the place of such resigning Trustee thereupon shall become and be vacant.

Whenever all the bonds shall have been made and issued by the said party of the first part under and in conformity to the provisions of this indenture, with the interest thereon, together with all the expenses incurred by the said Trustees in the execution of the trust herein and hereby created shall have been fully paid or satisfied, the said Trustees shall reconvey to the said party of the first part all and singular the said lands then in the hands of the said Trustees, and not before that time sold or disposed of, in the execution of the trust thereby created. In case the said Trustees shall at any time have any trust moneys on hand, received from the sale of the lands hereby conveyed which will not be required to meet any immediate

Reconvey-
ance by
Trustees
upon pay-
ment of
Bonds and
interest.

Deposit of
surplus
moneys by
Trustees.

liabilities of the Company, to which said moneys are by these presents devoted, the said moneys shall be loaned on interest, or deposited on interest with some bank or trust company in the city of San Francisco or Sacramento, subject to be drawn by checks signed by the Trustees or such one of them as they may designate. All of the books of the said Company, and of the Trustees, relating to the lands hereby conveyed, shall be mutually open to the inspection of said Company and said Trustees. It shall be the duty of the said Trustees to certify and deliver to the said party of the first part the said bonds, as the same from time to time shall be demanded, issued or used by the said party of the first part.

Responsi-
bility of
Trustees.

And it is hereby mutually agreed by and between the parties hereto, that the said parties of the second part, and their survivor and successors, and their heirs, executors and administrators, shall not be answerable for the acts, omissions or defaults of each other, nor for anything short of their own gross negligence or wilful misfeasance.

Provisions
of Acts of
Congress
to be ob-
served.

It is hereby declared by the parties to this indenture that all the provisions of said Acts of Congress, so far as they are applicable, are hereby made and shall be deemed and taken to be a part of this instrument; and the said provisions in all that concerns the sale and disposal of the said lands hereby

conveyed to the parties of the second part are to be observed and strictly and faithfully carried out and fulfilled.

And the said party of the first part covenants and agrees to and with the said parties of the second part, that the said party of the first part shall and will, at any and all times hereafter, and from time to time, execute, acknowledge and deliver, under its corporate seal, to the said parties of the second part, and their survivors or successors, all such other or further assurances, deeds, mortgages, obligations, transfers, indentures and instruments in writing, and shall and will do and perform all such other or further acts or things, as shall or may be necessary or proper, or as their counsel, learned in the law, shall deem necessary, proper or expedient, for the better or more effectually securing upon the above conveyed and mortgaged premises the payment of the said bonds so to be issued, and the interest due and to grow due thereon in manner aforesaid, or for carrying into effect the true intent, design, objects and purposes of these presents. And the said parties of the second part hereby accept the trust created and declared by this instrument and agree to discharge the same pursuant to the provisions in that behalf herein contained.

IN WITNESS WHEREOF, the said Southern Pacific Railroad Company has caused these

Will execute further instruments if necessary to secure payments of Bonds.

presents to be signed by its President and Secretary, and sealed with its corporate seal, and the above parties of the second part have hereunto set their hands and seal, the day and year first above written.

CHARLES CROCKER,

President Southern Pacific Railroad Company.

(Corpor-	J. L. WILLCUTT,
ate Seal	<i>Secretary Southern Pacific Railroad Company.</i>
S.P.R.R.	
Co.)	D. O. MILLS, (Seal)
	LLOYD TEVIS, (Seal)
	<i>Trustees.</i>

STATE OF CALIFORNIA, }
City and County of San Francisco. } ss.

On this third (3rd) day of July, in the year one thousand eight hundred and seventy-five (1875), before me, Charles J. Torbert, a Notary Public, in and for the said City and County of San Francisco, State of California, duly commissioned and qualified, personally appeared Charles Crocker, known to me to be the President of the Southern Pacific Railroad Company, and J. L. Willcutt, known to me to be the Secretary of the Southern Pacific Railroad Company, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 3rd day of July, A. D. 1875.

(Notarial Seal.) CHARLES J. TORBERT,

Notary Public in and for the City and County of San Francisco, State of California.

STATE OF CALIFORNIA, }
City and County of San Francisco. } ss.

I, Charles J. Torbert, a Notary Public in and for the said City and County of San Francisco, State of California, residing in the City of San Francisco, duly commissioned and sworn, do certify that on the sixth (6th) day of July, in the year one thousand eight hundred and seventy-five (1875), personally appeared before me, in the City and County of San Francisco, State of California aforesaid, Charles Crocker, President of the "Southern Pacific Railroad Company," and J. L. Willeutt, Secretary of the "Southern Pacific Railroad Company," who are both personally known to me to be the said officers of the said "Southern Pacific Railroad Company," respectively, and the individuals described in, and who have executed the foregoing instrument as such officers of said company, and they each severally and personally, then and there, acknowledged to me that they executed the said instrument as the free act and deed of the said "Southern Pacific Railroad Company," freely and voluntarily, and for the uses and purposes therein mentioned; and the said J. L. Willcutt, with whom I am personally acquainted, being by me duly sworn, did depose and say that he resides in the City and County of San Francisco, State of California; that he is and was Secretary of the "Southern Pacific Railroad Company" at the date and time he executed the foregoing instrument; that he knows the corporate seal of said company, and is and was at the date of said instrument the legal custodian of said seal; that the seal affixed to the foregoing instrument

was and is such corporate seal, and was by him so affixed by order of the Board of Directors of the said "Southern Pacific Railroad Company;" that he signed his name thereto as Secretary of said company by the like order. And the said J. L. Willett further said that he was and is acquainted with Charles Crocker, and knows that said Charles Crocker is and was President of the "Southern Pacific Railroad Company" at the date of said instrument; that the signature of the said Charles Crocker subscribed to said instrument is in the genuine handwriting of the said Charles Crocker, and was thereto by him subscribed by the like order of the Board of Directors of said company, and in the presence of him, the said deponent.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office, in the City and County of San Francisco, State of California, the 6th day of July, A. D. 1875.

CHARLES J. TORBERT,
Notary Public in and for the City and County
of San Francisco, State of California.

STATE OF CALIFORNIA,
City and County of San Francisco. } ss.

On this seventh (7th) day of July, in the year one thousand eight hundred and seventy-five (1875), before me, Charles J. Torbert, a notary public in and for the said City and County of San Francisco, State of California, duly commissioned and qualified, personally appeared D. O. Mills and Lloyd Tevis, known to me to be the persons whose names are subscribed to

the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office, in the City and County of San Francisco, State of California, this 7th day of July, A. D. 1875.

CHARLES J. TORBERT,
Notary Public in and for the City and County
of San Francisco, State of California.

Filed for record at the request of D. W. Parkhurst, and recorded in office of the County Recorder of San Mateo county, July 8th, 1875, at 5 p. m., in Liber 11 of Mortgages, at page 2 and following.

WITNESS my hand and seal of office.

(Seal) GEO. H. RICE, County Recorder.
Paid, \$22.50. By W. R. Thomas, Deputy.

Filed for record at the request of D. W. Parkhurst, July 9th, A. D. 1875, at 9 o'clock and 26 minutes A. M., and recorded in Book 15 of Mortgages, at page 156, *et seq.*, Records of the County of Santa Clara, in the State of California.

WITNESS my hand and seal of office.

(Seal) W. J. COLAHAN, County Recorder.
Paid, \$15. By F. J. Saxe, Deputy.

Filed for record at the request of D. W. Parkhurst, July 9th, A. D. 1875, at 8 o'clock and 53 minutes P. M., and recorded in Book 1 of Mortgages, at page 586 and

following, Records of San Benito County, in the State of California.

WITNESS my hand and seal of office.

(Seal) H. M. HAYS,
Fees \$15, paid. County Recorder.

Filed for record at the request of D. W. Parkhurst, July 10th, A. D. 1875, at 8 o'clock and 10 minutes P. M., and recorded in Volume 17, page 529 and following pages of the Mortgage Records of the County of Santa Cruz, in the State of California.

WITNESS my hand and seal of said County Recorder.

(Seal) Paid \$15.00. H. E. MAKINNEY,
County Recorder in and for Santa Cruz County.

Filed for record at the request of D. W. Parkhurst, July 12th, A. D. 1875, at 9 o'clock and 55 minutes A. M., and recorded in Book 1 of Mortgages, page 183 and following, Records of the County of Monterey, in the State of California.

WITNESS my hand and seal of office.

(Seal) HERBERT MILLS,
Fees \$15, p'd. County Recorder.

Filed for record at the request of D. W. Parkhurst, July 13th, A. D. 1875, at 6 o'clock and 25 minutes P. M., and recorded in Book "C" of Mortgages, page 540 *et seq.*, Records of the County of San Luis Obispo, in the State of California.

WITNESS my hand and seal of office County Recorder.

(Seal) CHAS. W. DANA,
Fees \$15. County Recorder.

Filed for record at the request of D. W. Parkhurst, July 14th, a. d. 1875, at 2 o'clock and 20 minutes p. m., and recorded in Book "F" of Mortgages, pages 164 and following, Records of the County of Santa Barbara, in the State of California.

WITNESS my hand and seal of office of County Recorder.

(Seal) H. P. STONE, County Recorder,
Fees \$15, p'd. By J. O. B. Wentling, Deputy.

Filed for record at the request of D. W. Parkhurst, July 16th, a. d. 1875, at 8 o'clock and 40 minutes a. m., and recorded in Book 15 of Mortgages, page 600 *et seq.*, Records of the County of Los Angeles, in the State of California.

WITNESS my hand and seal of office County Recorder.

(Seal) J. W. GILLETTE, County Recorder.
Fees \$15, p'd. By D. S. Lovejoy, Deputy.

Filed for record at the request of D. W. Parkhurst, July 19th, a. d. 1875, at nine o'clock and 15 minutes a. m., and recorded in Book Volume 2 of Mortgages, pages 217 and following, Records of the County of Kern, in the State of California.

WITNESS my hand and seal of office.

(Seal) F. W. CRAIG,
Fees \$15, p'd. County Recorder.

Filed for record at the request of D. W. Parkhurst, Esq., July 20th, a. d. 1875, at 8 o'clock and 15 min-

utes p. m., and recorded in Book D of Mortgages, pp. 310, *et seq.*, Records of the County of Fresno, in the State of California.

WITNESS my hand and seal of office of County Recorder.

(Seal) A. M. CLARK, County Recorder.

Pd. \$15. By C. L. Wainright, Deputy.

Filed for record at request of D. W. Parkhurst, July 21st, a. d. 1875, at 10 o'clock and 30 minutes a. m., and recorded in Book "K" of Mortgages, page 1, *et seq.*, Records of the County of Tulare, State of California.

WITNESS my hand and seal of office of County Recorder.

(Seal.) Pd. \$15. J. E. DENNY, Recorder.

By John G. Knox, Deputy.

Filed for record at the request of D. W. Parkhurst, July 23d, a. d. 1875, at 10 o'clock and 40 minutes p. m., and recorded in Book "D" of Mortgages, 544 *et seq.*, Records of the County of San Bernardino, in the State of California.

WITNESS my hand and seal of office of County Recorder.

(Seal.) Pd. \$15.00. SYDNEY P. WAITE,

County Recorder.

By R. S. Swing, Deputy.

Filed for record at the request of D. W. Parkhurst, July 26th, a. d. 1875, at 10 o'clock and 20 minutes a. m., and recorded in Book No. 7 of Mortgages, pages

103 *et seq.*, Records of the County of San Diego, in the State of California,

WITNESS my hand and seal of office of County Recorder.

(Seal.)

A. S. GRANT, County Recorder.

Fees, \$15.

By E. G. Haight, Deputy.

Filed for record at the request of D. W. Parkhurst, July 28th, A. D. 1875, at 24 minutes past 4 p. m., and recorded in Book No. 2 of Mortgages, pages 46 *et seq.*, Records of the County of Ventura, State of California.

WITNESS my hand and seal of office of County Recorder.

(Seal.) Fees, \$18.

JOHN T. STOW,
County Recorder.

Recorded at request of D. W. Parkhurst, August 3rd, A. D. 1875, at 1 p. m., in Liber 443 of Mortgages, page 309, in the office of the County Recorder of the City and County of San Francisco, State of California.

O. H. FRANK,
County Recorder.

Recorded at request of Wells, Fargo & Co., August 20, 1880, at 20 min. past 9 A. M., in Book 1 of Mortgages, page 557, *et seq.*, Records of Merced County.

(Seal) \$15. E. J. HAMILTON, County Recorder.

By M. H. Walsh, Deputy.

Recorded at request of Wells, Fargo & Co., August 23d, A. D. 1880, at 5 min. past 9 o'clock A. M., in Vol.

15 of Mortgages, at pages 139 *et seq.*, Records of Stanislaus County.

(Seal) \$15, paid.

JOHN MCCOY,
Recorder.

Recorded at request of J. L. Willeutt, September 6th, 1880, at 30 min. past 10 o'clock a. m., in Liber 624 of Mortgages, page 305, in the office of the County Recorder of the City and County of San Francisco, State of California.

(Seal) W. K. DIETRICH, County Recorder.
By Richard Blauvelt, Deputy.

To the President and Board of Directors of the Southern Pacific Railroad Company, and all other persons concerned:

Resignation of
Lloyd
Tevis,
Trustee.

KNOW YE, that I, Lloyd Tevis, one of the Trustees, under a certain indenture made and entered into on the first day of April, A. D. 1875, by and between the Southern Pacific Railroad Company, a railroad corporation duly incorporated and organized under and in pursuance of the laws of the State of California, party of the first part, and D. O. Mills and Lloyd Tevis of the City and County of San Francisco, California, parties of the second part, have this day resigned, and do hereby resign, the position of said Trustee under said indenture, in pursuance of the provisions thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal on this the 24th day of March, A. D. 1883.

LLOYD TEVIS, (Seal.)

STATE OF CALIFORNIA,

City and County of San Francisco. } ss.

On this twenty-seventh (27th) day of March, in the year one thousand eight hundred and eighty-three, (1883), before me, Charles J. Torbert, a Notary Public in and for the said City and County of San Francisco, State of California, duly commissioned and qualified, personally appeared Lloyd Tevis, known to me to be the person whose name is subscribed to the above instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my (Notarial hand and affixed my official seal this Seal). twenty-seventh (27th) day of March, A. D. 1883.

CHARLES J. TORBERT,
Notary Public in and for the City and
County of San Francisco, State of California.

*To the Southern Pacific Railroad Company and to its
Board of Directors:*

Lloyd Tevis, of the City and County of San Francisco, one of the trustees named in a certain indenture made and entered into on the first day of April, 1875, between the

Southern Pacific Railroad Company, party of the first part, and D. O. Mills and Lloyd Tevis, of the City and County of San Francisco, parties of the second part, having duly resigned his place as Trustee by proper deed, in writing, to that effect, and such resignation having been accepted by the party of the first part, and thereby the place of such resigning Trustee having become and now is vacant,

Nomination of
Gerrit L.
Lansing
for Trustee sub-
mitted to
the Board
of Directors.

THEREFORE, I, the remaining Trustee, in accordance with the provisions of said indenture in this respect, do hereby nominate Gerrit L. Lansing a proper person to fill such vacancy, and do hereby submit to the Board of Directors of said company such nomination for the approval of said board.

Dated in New York this third day of April,
A. D. 1883.

D. O. MILLS. (Seal)

Witness: EDWIN F. COREY.

STATE OF NEW YORK, } ss.
City and County of New York. }

BE IT REMEMBERED, that on this third day of April, in the year one thousand eight hundred and eighty-three, before me, the undersigned, Edwin F. Corey, a Commissioner, resident in the City of New York, duly commissioned and qualified by the executive authority, and under the laws of the State of California, to take acknowledgment of deeds, etc., to be used or recorded therein, personally appeared D. O. Mills, known to me

to be the person whose name is subscribed to the within instrument, and he acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my (Commiss- hand and affixed my official seal, the day sioner's and year first aforesaid.

Seal.)

EDWIN F. COREY,

Commissioner for State of California.

Office, 54 Wall Street, N. Y.

WHEREAS, on the 1st day of April, 1875, this company conveyed all its railroad and telegraph lines, its rights of way, roadway, tracks and other property, including all its lands, to D. O. Mills and Lloyd Tevis, upon certain trusts therein declared.

AND WHEREAS, on the 24th day of March, 1883, said Lloyd Tevis resigned his trust under said conveyance;

AND WHEREAS, on the 3d day of April, 1883, the said D. O. Mills, pursuant to the conditions of said trust, did nominate Gerrit L. Lansing, of the City of San Francisco and State of California, as a fit and proper person to fill the vacancy caused by the said resignation of the said Lloyd Tevis;—

Nomination of
Gerrit L.
Lansing
approved
by the
Board of
Directors.

NOW, THEREFORE, it is ordered, that the said nomination be approved, and that the said Gerrit L. Lansing be and he is hereby appointed to fill said vacancy.

WITNESS, the corporate seal of said Southern Pacific Railroad Company, and the hands of

its President and Secretary hereunto fixed
and set, on this the 17th day of April, A. D.
1883.

(Corporate Seal)

(S. P. R. R. Co.)

CHARLES CROCKER,

President.

J. L. WILLETT,

Secretary.

STATE OF CALIFORNIA, }
City and County of San Francisco, } ss.

On this nineteenth (19th) day of April, in the year one thousand eight hundred and eighty-three (1883), before me, Charles J. Torbert, a Notary Public in and for the said City and County of San Francisco, State of California, duly commissioned and qualified, personally appeared Charles Crocker, known to me to be the President, and J. L. Willcutt, known to me to be the Secretary, of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my (Notarial hand and affixed my official seal this nine-
Seal.) teenth (19th) day of April, A. D. 1883.

CHARLES J. TORBERT,

Notary Public in and for the City and County
of San Francisco, State of California.

KNOW ALL MEN BY THESE PRESENTS:

THAT, WHEREAS, on the first day of April, A. D. 1875, the Southern Pacific Railroad Company, a railroad corporation duly incorporated under and pursuant to the laws of the State of California, did, by an

instrument in writing, convey all its railroad and telegraph lines, its rights of way, roadway, tracks and other property, including all its lands, to D. O. Mills and Lloyd Tevis, upon certain trusts declared in said conveyance;

AND, WHEREAS, on the 24th day of March, 1883, said Lloyd Tevis resigned his trust under said conveyance;

AND, WHEREAS, on the 3d day of April, 1883, the said D. O. Mills, pursuant to the conditions of said trust, did nominate Gerrit L. Lansing, of the city of San Francisco and State of California, as a fit and proper person to fill the vacancy caused by the said resignation of the said Lloyd Tevis;

Acceptance of
Gerrit L.
Lansing as
Trustee. AND, WHEREAS, on the 17th day of April, 1883, the Board of Directors of said Southern Pacific Railroad Company did approve the said nomination;

Now, THEREFORE, I, the said Gerrit L. Lansing, pursuant to the provisions of said trust-mortgage, do hereby accept the trust created by said mortgage as the successor of said Lloyd Tevis.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 18th day of April, A. D. 1883.

GERRIT L. LANSING. (Seal)

STATE OF CALIFORNIA,

City and County of San Francisco, ¹/_{ss.}

On this nineteenth (19th) day of April, in the year one thousand eight hundred and eighty-three (1883), before me, Charles J. Torbert, a Notary Public in and

for the said City and County of San Francisco, State of California, duly commissioned and qualified, personally appeared Gerrit L. Lansing, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this nineteen (19th) day of April, A. D. 1883.

(Notarial Seal) CHARLES J. TORBERT,

Notary Public in and for the City and County of San Francisco, State of California.

Filed for record at request of R. G. Oliver, May 22nd, A. D. 1883, at 10 o'clock A. M., and recorded in Book 17 of Mortgages, page 22 *et seq.*, Records of the County of San Mateo, in the State of California.

WITNESS my hand and seal of County Recorder.

(Seal) J. W. BICKNELL, County Recorder.

By H. B. Thompson, Deputy.

Filed for record at request of R. G. Oliver, May 22nd, A. D. 1883, at 5 minutes past 2 o'clock, P. M., and recorded in Book "J" of Miscellaneous Records, pages 448 *et seq.*, Records of the County of Santa Clara, in the State of California.

WITNESS my hand and seal of County Recorder.

(Seal) J. M. PITMAN, County Recorder.

By Geo. Fethersten, Deputy.

Filed for record at the request of R. G. Oliver, May 23rd, A. D. 1883, at twenty minutes past 9 o'clock A.

M., and recorded in Book 6 of Mortgages, pages 528 and following, Records of the County of San Benito, in the State of California.

WITNESS my hand and seal of County Recorder.

(Seal) THOS. F. McMAHON, County Recorder.
By Wm. McCarthy, Deputy Recorder.

Filed for record at the request of R. G. Oliver, May 24th, A. D. 1883, at 50 minutes past 9 o'clock A. M., and recorded in Volume 37 of Mortgages, at pages 1 and following, Records of the County of Santa Cruz, in the State of California.

WITNESS my hand and seal of County Recorder.

(Seal.) H. E. MAKINNEY,
County Recorder.

Filed for record at the request of R. G. Oliver, May 24th, 1883, at 40 minutes past 4 P. M., and recorded in Liber "S" of Mortgages, at pages 163 and following, Records of Monterey County, State of California.

WITNESS my hand and seal of County Recorder.

(Seal.) M. M. SPEEGLE,
County Recorder.

Filed for record at request of R. G. Oliver, May 26, A. D. 1883, at 4 o'clock and 5 minutes P. M., and recorded in Book "I" of Mortgages, page 240 *et seq.*, San Luis Obispo County Records, State of California.

WITNESS my hand and seal of County Recorder.

(Seal.) F. E. DARKE,
County Recorder.

Filed for record at the request of R. G. Oliver, May 31st, A. D. 1883, at 9 o'clock and 20 minutes A. M., and recorded in Book "B" of Miscellaneous Records, pages 446 *et seq.*, Records of the County of Santa Barbara, in the State of California.

WITNESS my hand and seal of County Recorder.

(Seal)

H. STODDARD,
Recorder.

Filed for record at the request of R. G. Oliver, May 31st, A. D. 1883, at 4 o'clock and 30 minutes P. M., and recorded in Book 2 of Miscellaneous Records, pages 108 *et seq.*, Records of the County of Ventura, in the State of California.

WITNESS my hand and seal of County Recorder.

(Seal)

JOHN J. STOW, Recorder.
By Robt. W. Forth, Deputy.

Filed for record at the request of R. G. Oliver, June 2nd, 1883, at 43 minutes past 2 o'clock P. M., and recorded in Book 50 of Mortgages, pages 256 *et seq.*, Records of Los Angeles County, State of California.

WITNESS my hand and seal of County Recorder, Los Angeles Co., Cal.

(Seal)

CHAS. E. MILES, Recorder.
By W. B. Pritchard, Deputy.

Filed for record at the request of R. G. Oliver, June 5th, A. D. 1883, at 40 minutes past 11 A. M., and recorded in Book "M" of Mortgages, pages 565 *et seq.*, Records

of the County of San Bernardino, in the State of California.

WITNESS my hand and seal of County Clerk, who is *ex-officio* County Recorder.

(Seal) W. F. HOLCOMB, County Recorder.

By E. A. Nisbet, Deputy.

Filed for record at the request of R. G. Oliver, June 6th, a. d. 1883, at 10 o'clock and 5 minutes a. m., and recorded in Book No. 12 of Mortgages, pages 1 *et seq.*, Records of the County of San Diego, in the State of California, this June 6th, 1883, at 2 o'clock p. m.

WITNESS my hand and seal of County Recorder.

(Seal) E. G. HAIGHT, County Recorder.

By H. T. Christian, Deputy.

Filed for record at the request of R. G. Oliver, June 9th, a. d. 1883, at 9 o'clock and 10 minutes a. m., and Recorded in Book Vol. Six (6) of Mortgages, pages 116 *et seq.*, Records of the County of Kern, in the State of California.

WITNESS my hand and seal of County Recorder.

(Seal) A. T. LIGHTNER,
County Recorder.

Filed for record at the request of R. G. Oliver, June 11th, a. d. 1883, at 9 o'clock and 40 minutes a. m., and recorded in Book "S" of Mortgages, pages 612 *et seq.*, Records of the County of Tulare, in the State of California.

WITNESS my hand and seal of County Recorder.

(Seal) J. E. DENNY,
County Recorder.

Filed for record at the request of R. G. Oliver, June 12th, A. D. 1883, at 7 o'clock and 40 minutes A. M., and recorded in Book "O" of Mortgages, pages 43 *et seq.*, Records of the County of Fresno, in the State of California.

WITNESS my hand and seal of County Recorder.

(Seal) A. M. CLARK, County Recorder.

By A. C. Williams, Deputy Recorder.

Filed for record at the request of R. G. Oliver, June 12th, A. D. 1883, at 3 o'clock and 35 minutes P. M. and recorded in Book "A," Miscellaneous Records, pages 174 *et seq.*, Records of the County of Merced, in the State of California.

WITNESS my hand and seal of County Recorder.

(Seal) J. F. McSWAIN,
County Recorder.

Filed for record at the request of R. G. Oliver, June 13th, A. D. 1883, at 10 o'clock and 30 minutes A. M., recorded in Book Vol. Nineteen (19) of Mortgages, pages 308 *et seq.*, Records of the County of Stanislaus, in the State of California.

WITNESS my hand and seal of County Recorder.

(Seal) JOHN McCOVY,
County Recorder.

Recorded in the office of the County Recorder of the City and County of San Francisco, June 15th, 1883, at 15 minutes past 12 o'clock M., in Liber 45 of Miscellaneous, page 54, at the request of R. G. Oliver.

(Seal) WM. J. BRYAN, County Recorder.
Per Henry Casey, Deputy.

[Endorsed]: Trust Mortgage. Southern Pacific Railroad Co. To D. O. Mills and Lloyd Tevis, Trustees. Dated April 1st, 1875. Resignation of Lloyd Tevis and appointment of Gerrit L. Lansing. Acceptance April 18th, 1883. Received May 31st, 1893. Wm. M. Van Dyke, Clerk. Filed June 12, 1893. Wm. M. Van Dyke, Clerk.

U. S. v. S. P. et als. 184. Respts. Exhibit "F"
(attached to amended answer to amended bill).

THIS INDENTURE, made this 25th day of August, 1888, between the Southern Pacific Railroad Company, a railroad corporation duly organized and existing under the laws of the United States and of the State of California, party of the first part, the Southern Pacific Company, a corporation organized and existing under the laws of the State of Kentucky, and lessee of portions of the Southern Pacific Railroad, party of the second part, and the Central Trust Company of New York, a corporation created, organized and existing under the laws of the State of New York, party of the third part.

WITNESSETH:

THAT WHEREAS, The Southern Pacific Railroad Company, as it existed prior to the consolidation and amalgamation hereinafter set out did, to secure the payment of its bonds in the sum of \$46,000,000, heretofore, to-wit: on the first day of April, 1875, make and execute its first mortgage on its entire line of railroad as then constituted, to-wit: on the whole of its railroad and telegraph line running from the City of San Francisco, in the State of California, in a

southerly and southeasterly direction, by way of Carnadero Junction, Salinas Valley and Polonio Pass, to the Colorado River at or near the "Needles;" also from Carnadero Junction to San Benito; also from Los Gatos Creek *via* Goshen to the junction with the first mentioned line, between Poso Creek and Kern River; also from the junction near Tehachapi Pass *via* Los Angeles to the Texas Pacific Railroad near Fort Yuma, and also from Los Angeles to Wilmington, on San Pedro Bay, aggregating eleven hundred and fifty (1,150) miles of railroad and telegraph line, more or less, and on the several sections of land granted to said Southern Pacific Railroad Company by the Acts of Congress of July 27, 1866, and March 3, 1871, as stated in said mortgage, saving, excepting and reserving, however, all parts and parcels of said lands which had been sold, or contracted to be sold or disposed of theretofore, or which were or should be included in the rights of way of said railroads and telegraph lines of said company, as defined and granted by the Acts of Congress aforesaid, or used for the construction or operation thereof, or for the track, yards, depot grounds, buildings or erections thereof.

And, WHEREAS, Subsequent thereto, by instrument in writing, dated the fourth day of May, 1888, and pursuant to the laws of the State of California, in such cases made and provided, the San Jose and Almaden Railroad Company, the Pajaro and Santa Cruz Railroad Company, the Monterey Railroad Company, the Monterey Extension Railroad Company, the Southern Pacific Branch Railway Company, the San Pablo and

Tulare Railroad Company, the San Pablo and Tulare Extension Railroad Company, the San Ramon Valley Railroad Company, the Stockton and Copperopolis Railroad Company, the Stockton and Tulare Railroad Company, the San Joaquin Valley and Yosemite Railroad Company, the Los Angeles and San Diego Railroad Company, the Los Angeles and Independence Railroad Company, the Long Beach, Whittier and Los Angeles County Railroad Company, the Long Beach Railroad Company, the Southern Pacific Railroad Extension Company, and the Ramona and San Bernardino Railroad Company (railroad corporations organized and existing under the laws of the State of California) amalgamated and consolidated their capital stocks, debts, properties, assets and franchises with the capital stock, debts properties, assets and franchises of the Southern Pacific Railroad Company of California.

AND, WHEREAS, By force and effect of said amalgamation and consolidation, the said party of the first part has succeeded to all of the debts, properties, assets and franchises of said several railroad companies, and now holds and owns the said several lines of railroad heretofore owned and held by them respectively, together with their respective properties, assets and franchises.

AND, WHEREAS, The said Pajaro and Santa Cruz Railroad Company, to aid in the construction and completion of its line of railroad, did, prior to said amalgamation and consolidation, authorize the issuance of five hundred and thirty (530) of its thirty-year first mortgage bonds of one thousand dollars each,

bearing date the 1st day of January, 1885, bearing interest at the rate of six per cent. per annum, payable semi-annually, secured by a mortgage or deed of trust bearing date the 1st day of January, 1885, to S. T. Gage and E. B. Ryan, and covering its railroad, commencing at the town of Pajaro, in the County of Monterey, in the State of California, and extending thence to the City of Santa Cruz, in the County of Santa Cruz, in said State, with a branch line commencing at the town of Aptos, in said County of Santa Cruz, and running thence in a northerly and northeasterly direction, following the meanders of Aptos Creek to the point of confluence of said creek with the creek running from White's Lagoon, a distance of twenty-six miles, as near as may be, together with all its corporate rights, its appurtenances, etc.

AND WHEREAS, The said Monterey Railroad Company, to aid in the construction and completion of its line of railroad, did, prior to said amalgamation and consolidation, authorize the issuance of two hundred and fifty (250) of its twenty-year first-mortgage bonds of one thousand dollars each, bearing date the first day of April, 1880, bearing interest at the rate of five per cent. per annum, payable semi-annually, secured by a mortgage or deed of trust, bearing date the ninth day of March, 1880, to Stephen T. Gage and E. B. Ryan, and covering the whole of the railroad line of said company, commencing at or near the town of Castroville, in the County of Monterey, in the State of California, and running through the County of Monterey, to a point at or near the City of Monterey, in said county, a distance of fifteen and four-tenths (15.4)

miles, together with all its corporate rights, its appurtenances, etc.

AND WHEREAS, The said Southern Pacific Branch Railway Company, to aid in the construction and completion of its line of railroad, did, prior to said amalgamation and consolidation, authorize the issuance of nine thousand of its fifty-year first-mortgage bonds of one thousand dollars each, bearing date the first day of April, 1887, bearing interest at the rate of six per cent. per annum, payable semi-annually, secured by a mortgage or deed of trust, bearing date the twenty-fourth day of November, 1886, to William E. Brown and Gerrit L. Lansing, and covering the whole of the railroad line of the said company, commencing at a point near San Miguel, in the County of San Luis Obispo, in the State of California, there connecting with the railroad of the Southern Pacific Railroad Company, and running from thence in a general southeasterly direction through and into the Counties of San Luis Obispo, Santa Barbara, Ventura and Los Angeles to a connection with the railroad of the Southern Pacific Railroad Company, near Newhall, in said Los Angeles county, a distance of about two hundred and fifty miles, as near as may be, together with all the corporate rights pertaining to said road, its appurtenances, etc.

AND, WHEREAS, The said San Pablo and Tulare Railroad Company, to aid in the construction and completion of its line of railroad, did, prior to said amalgamation and consolidation, authorize the issuance of three thousand seven hundred and fifty (3,750) of its thirty-year first-mortgage bonds of one thousand dol-

lars each, bearing date the first day of April, 1878, bearing interest at the rate of six per cent. per annum, payable semi-annually, secured by a mortgage or deed of trust, bearing date the second day of September, 1878, to Albert Gallatin and Charles Miller, and covering its line of railroad, constructed and unconstructed, running from a point at or near Martinez, in the County of Contra Costa, through the Counties of Contra Costa, San Joaquin, Stanislaus, Merced and Fresno to a point at or near Los Gatos Creek, a distance of one hundred and fifty (150) miles, as near as may be, with all rolling stock, appurtenances, etc.

AND, WHEREAS, The said Los Angeles and San Diego Railroad Company, to aid in the construction of its line of railroad, did, prior to said amalgamation and consolidation, authorize the issuance of two thousand eight hundred (2,800) of its thirty-year first-mortgage bonds of one thousand dollars each, bearing date the first day of July, 1880, with interest at the rate of six per cent. per annum, payable semi-annually, secured by a mortgage or deed of trust bearing date the second day of December, 1880, to S. T. Gage and E. B. Ryan, and covering its railroad line, constructed and unconstructed, from the City of Los Angeles, in a southerly direction, to the City of San Diego, in the southwestern part of the State of California, with all rolling stock, appurtenances, etc., a distance of 140 miles, as near as may be.

AND, WHEREAS, There are now outstanding \$530,000 of said Pajaro and Santa Cruz Railroad Company's bonds; \$220,000 of said Monterey Railroad Company's

bonds (the balance of \$30,000 having been redeemed, canceled and retired); \$3,145,000 of said Southern Pacific Branch Railway Company's bonds (the balance, \$5,855,000, being unissued and in the hands of the party of the first part); \$1,023,000 of said San Pablo and Tulare Railroad Company's bonds (the balance, \$2,727,000, being unissued and in the hands of the party of the first part); and \$556,000 of the said Los Angeles and San Diego Railroad Company's bonds (the balance, \$2,244,000, being unissued and in the hands of the party of the first part).

AND, WHEREAS, Said mortgages and each of them are valid and subsisting liens upon the lines of railroad heretofore described, and now the property of the party of the first part.

AND, WHEREAS, The owners of all the outstanding bonds heretofore issued as aforesaid by the Pajaro and Santa Cruz Railroad Company, the Monterey Railroad Company, the San Pablo and Tulare Railroad Company, and the Los Angeles and San Diego Railroad Company, are willing to surrender said bonds and permit the respective mortgages heretofore made to secure the payment thereof and hereinbefore described, to be satisfied of record and canceled, and receive in lieu thereof new fifty-year five per cent. bonds, secured by this mortgage.

AND, WHEREAS, The party of the first part desires and intends to redeem and take up said mortgage bonds issued by said constituent companies, to-wit: the outstanding mortgage bonds of the Pajaro and Santa Cruz Railroad Company in the sum of \$530,000, the outstanding mortgage bonds of the Monterey Rail-

road Company in the sum of \$220,000, the outstanding mortgage bonds of the San Pablo and Tulare Railroad Company in the sum of \$1,023,000, and the outstanding mortgage bonds of the Los Angeles and San Diego Railroad Company in the sum of \$556,000, and retire the same, and to destroy, cancel and retire the unissued bonds of the San Pablo and Tulare Railroad Company in the sum of \$2,727,000, and the unissued bonds of the Los Angeles and San Diego Railroad Company in the sum of \$2,244,000, and cause said existing mortgages to be satisfied of record and canceled; and as rapidly as the same can be done upon terms satisfactory to the party of the first part to arrange for the redemption of the mortgage bonds issued by said Southern Pacific Branch Railway Company, and when arrangements have been made for the redemption of all of such bonds to cause the same to be canceled, and the mortgage securing the same to be satisfied of record; and in lieu of said outstanding bonds to issue new fifty-year five per cent bonds secured by this mortgage; and said party of the first part desires and intends to pay off and discharge the floating debt incurred in the construction and completion of certain portions of its lines of railroad, and desires to complete the construction and equipment thereof, and to that end desires and intends to issue its bonds in an amount necessary to accomplish said objects and purposes, and to secure the payment thereof by mortgage upon certain of its constituent lines of railroad, hereinafter more particularly described.

AND, WHEREAS, Heretofore, to-wit, on the 21st day of August, 1888, the Board of Directors of said South-

ern Pacific Railroad Company, at a meeting of said Board, at which all the members thereof were present, by a resolution to that effect, which was unanimously adopted, passed and concurred in, did determine and direct that bonds of said company be prepared, executed and issued in its name and under its corporate seal, and signed by its President and Secretary, to bear date the first day of October, 1888, in the sum of one thousand dollars each, to the number of thirty-eight thousand, numbered from one to thirty-eight thousand inclusive, payable to the Central Trust Company of New York, or to the bearer thereof, fifty years after date, with interest at the rate of five per cent. per annum, payable semi-annually, on the first days of April and October of each year ensuing its date, payable, both principal and interest, in United States Gold Coin, in the City of New York.

AND, WHEREAS, the said Board of Directors, at the meeting aforesaid, and in the manner and form, and by the vote aforesaid, did further order and direct that said bonds should be drawn in substantially the following form, to-wit:

\$1,000. UNITED STATES OF AMERICA. \$1,000.
SOUTHERN PACIFIC RAILROAD COMPANY (OF CALIFORNIA)
FIRST MORTGAGE FIVE PER CENT. GOLD BOND.

The Southern Pacific Railroad Company (of California) acknowledges itself indebted to the Central Trust Company of New York, or to the bearer hereof, in the sum of one thousand dollars, gold coin of the United States, which sum it promises to pay to the bearer hereof, or, if registered, to the registered holder

hereof, fifty years after date; and it further promises that, on presentation and surrender at or after maturity of the respective interest coupons hereunto annexed, it will pay to the person presenting the same, or, if this bond is registered and the interest coupons appertaining thereto canceled, it will pay to the registered holder hereof, interest on such principal sum at the rate of five per cent. per annum, semi-annually, on or after the first day of April and October of each year ensuing the date hereof, both principal and interest payable at the office or agency of the Company in the City of New York, in United States Gold Coin.

This is one of the first mortgage bonds issued under and secured by the indenture of mortgage or deed of trust from this Company to the Central Trust Company of New York, Trustee, dated the twenty-fifth day of August, 1888.

None of said bonds are to be in anywise binding or obligatory, unless authenticated by a certificate endorsed thereon, signed by said Trustee or its successor or successors in said trust.

This bond may at any time, upon production thereof to said Railroad Company, and proper endorsement being made thereon, and either with or without the surrender to said Railroad Company for cancellation of all unpaid interest coupons appertaining thereto, be registered upon the books of the company in the name of the holder thereof, and thereupon its transferability by delivery will cease, and thereafter it can be transferred only by the registered holder or his attorney by transfer duly made upon said books.

I X WITNESS WHEREOF, the said Southern Pacific Railroad Company has caused its corporate seal to be hereunto affixed, and this bond to be signed by its President and Secretary, this first day of October, one thousand eight hundred and eighty-eight.

SOUTHERN PACIFIC RAILROAD COMPANY,

President.

Secretary.

AND, WHEREAS, The said Board of Directors, at the meeting aforesaid, and in the manner and form and by the vote aforesaid, did further direct that to each of said bonds there should be attached one hundred interest coupons, numbered respectively from one to one hundred, inclusive, substantially in the following form, to-wit:

\$25.	(Coupon.)	\$25.
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SOUTHERN PACIFIC RAILROAD COMPANY,

(OF CALIFORNIA.)

First Mortgage Five Per Cent. Gold Bond No.

*Interest coupon for Twenty-five Dollars, due
payable in the City of New York, in United States Gold
Coin. Coupon. No.*

Treasurer.

And that all such coupons should bear the impression of the engraved signature of the Treasurer, which impression should be regarded and treated, in fact and in law, as equivalent to a manual signing by said officer.

AND, WHEREAS, The said Board of Directors, at the meeting aforesaid, and in manner and form and by the vote aforesaid, did further direct that, to secure the payment of said bonds, a mortgage upon certain of its constituent lines of railroad and telegraph, and upon certain of its lands, should be executed in its name and under its corporate seal, and be signed by its President and Secretary, to the Central Trust Company of New York, as Trustee, for the holders of said bonds; said mortgage to cover the railroad and telegraph line, rolling stock, stations, fixtures and franchises held, owned and possessed by it in the following constituent lines of railroad, all lying within the State of California.

First—Running from Hillsdale to the town of New Almaden, all in Santa Clara county, being seven and eight-tenths (7.8) miles in length, more or less.

Second—Running from Pajaro, in Monterey county, to Santa Cruz, in Santa Cruz county; also, running from Aptos, in said Santa Cruz county, northerly and northeasterly, about five miles, being twenty-six and two-tenths (26.2) miles in length, more or less.

Third—Running from a point at or near Castroville Station, in Monterey county, to a point at or near Monterey, in said county; thence northwesterly to a point at or near Pacific Grove retreat; and thence southwesterly to a point near the mouth of the Carmel River, an estimated length of thirty-one and twelve hundredths (31.12) miles.

Fourth—Running from a point near San Miguel, in San Luis Obispo county, in the State of California, there connecting with the railroad of the Southern

Pacific Railroad Company; and running from thence in a general southeasterly direction through and into the Counties of San Luis Obispo, Santa Barbara, Ventura and Los Angeles, to a connection with the railroad of the Southern Pacific Railroad Company, in said Los Angeles county, near Newhall, being about two hundred and fifty (250) miles in length.

Fifth—Running from a point near Martinez, in Contra Costa county, to Tracey, in San Joaquin county, a distance of forty-seven and fifty-eight hundredths (47.58) miles, more or less; running thence from Tracey through the counties of San Joaquin, Stanislaus, Merced, Fresno and Tulare, to a connection with the San Joaquin division of the railroad of the party of the first part at or near Pampa, in the County of Kern, a distance of two hundred and sixty miles, more or less, and aggregating three hundred and seven and fifty-eight hundredths (307.58) miles, more or less.

Sixth—Running from a point at or near Avon, in Contra Costa county, to a point on the Central Pacific Railroad at or near Pleasanton, in the county of Alameda, a distance of thirty-five (35) miles, more or less.

Seventh—Running from a point at or near Oakdale in Stanislaus county, through and into the Counties of Stanislaus, Merced, Fresno and Tulare, to a point at or near the town of Poso, in Kern county, a distance of two hundred (200) miles, more or less, with branches connecting with the Central Pacific Railroad to or near Modesto, in Stanislaus county, a distance of sixteen (16) miles, more or less, to or near Merced, in Merced county, a distance of ten (10) miles, more or

less, to or near Sycamore, in Fresno county, a distance of ten (10) miles, more or less, to or near Fresno, in Fresno county, a distance of ten (10) miles, more or less, with a branch to or near Tulare, in Tulare county, there connecting with the San Joaquin division of the railroad of the party of the first part, a distance of sixteen (16) miles, more or less; said line and branches being two hundred and sixty-two (262) miles in length, more or less.

Eighth—Running from Berenda Station, in Fresno County, to a point at or near Perry's Ranch, in said county, a distance of twenty-five (25) miles, more or less.

Ninth—Running from a point at or near the City of Los Angeles, in the County of Los Angeles, to the towns of Anaheim and Santa Ana, in said county; and thence through the Counties of Los Angeles and San Diego to a point at or near the City of San Diego, in said last mentioned county, a distance of one hundred and forty (140) miles, more or less.

Tenth—Running from a point at or near the City of Los Angeles to Santa Monica, in Los Angeles County, a distance of eighteen and fifty-hundredths (18.50) miles, more or less.

Eleventh—Running from a point at or near Long Beach, in Los Angeles County to Whittier; thence to Ramona, a distance of thirty (30) miles, more or less; also running from a point at or near Los Angeles to a point on the main line of the railroad of the party of the first part between El Monte and Puente, and thence northeasterly to a point on or near San Dimos Creek, a distance of thirty (30) miles, more or less,

all in said County of Los Angeles, and aggregating sixty (60) miles in length, more or less.

Twelfth—Running from a point at or near Long Beach Junction, in Los Angeles County, to the town of Long Beach; thence easterly to the boundary line between the Ranchos Los Cerritos and Los Alamitos, in said county, a distance of four (4) miles, more or less.

Thirteenth—Running from a point on the line of the Wilmington Division of the railroad of the party of the first part, between the towns of Wilmington and San Pedro, in the County of Los Angeles, through said town of San Pedro to a point at or near Point Fermin; thence westerly through the lands of the San Pedro Harbor, Dock and Land Association, to the westerly boundary of said lands, all in the County of Los Angeles, and being five (5) miles in length, more or less.

Fourteenth—Running from a point at or near Ramona, in Los Angeles County, to a point at or near Crafton, in San Bernardino County, a distance of seventy-one (71) miles more or less.

Fifteenth—Running from the City of San Francisco, in a southerly and southeasterly direction, by way of Carnadero Junction, Salinas Valley and Polonio Pass to Mojave Junction; also from Carnadero Junction to San Benito; also from Los Gatos Creek *via* Goshen to the junction with the first mentioned line between Poso Creek and Kern River; also from the junction near Tehachapi Pass, *via* Los Angeles to Yuma, in the County of San Diego; and also from Los Angeles to Wilmington on San Pedro Bay, aggregating nine

hundred and eight miles of railroad and telegraph line, or thereabouts.

And also to cover the lands granted to the Southern Pacific Railroad Company by the Acts of Congress of July 27, 1866, and March 3, 1871, above referred to, not sold or contracted to be sold or disposed of prior to the execution of this mortgage, or included in the right of way of the railroads and telegraph lines of the said Company, or used or to be used for the construction or operation thereof, or for the tracks, yards, depot grounds, buildings or erections thereof.

AND, WHEREAS, Said Board of Directors at the meeting aforesaid, and in the manner and form, and by the vote aforesaid, did further direct that a sinking fund should be created for the redemption and payment of said bonds by setting apart the sum of twenty thousand dollars of the net income derived by said Company from the constituent lines of railroad herein mortgaged in the year 1898 (?) and in each year thereafter, until all of said bonds, principal and interest, shall be redeemed or paid in trust, to be loaned out at interest upon good securities, or otherwise invested, under the order and direction of said Board of Directors, or used to redeem said bonds as often as twenty thousand dollars shall come into the sinking fund; in which case notice shall be published in one daily paper in the City of New York, and one daily paper in the City of San Francisco, for such length of time as the Board of Directors may order, that said bonds will be redeemed, and inviting bids for the surrender thereof, at prices to be named, the lowest bids to be accepted; and bonds redeemed to the extent of the money in the sinking fund.

AND, WHEREAS, The Southern Pacific Company, party of the second part herein, and lessee of certain portions of the railroads of the party of the first part affected by this mortgage, has been in writing notified and informed of this mortgage, and has, in writing, by order of its Board of Directors given its consent thereto, and as an evidence of such consent has become a party hereto.

NOW, THEREFORE, THIS INDENTURE WITNESSETH: That the said party of the first part, for the purpose of securing the payment of the sums of money mentioned in said bonds, and the interest thereon, and in consideration of the sum of one dollar to the said party of the first part, in hand paid by the party of the third part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, released, enfeoffed, conveyed and confirmed, and by these presents does grant, bargain, sell, release, enfeoff, convey and confirm unto the said party of the third part, as Trustee, and to its successors and assigns for ever, the following property, now and hereafter constructed, purchased, acquired, held in possession, and owned by said party of the first part, to-wit:

Its constituent lines of railroad lying within the State of California, and running:

First—From Hillsdale to the town of New Almaden, all in Santa Clara county, being seven and eight-tenths (7.8) miles, more or less.

Second—From Pajaro, in Monterey county, to Santa Cruz, in Santa Cruz county; also, running from Aptos, in said Santa Cruz county, northerly and northeasterly

about five (5) miles, being twenty-six and two-tenths (26.2) miles in length, more or less.

Third—From a point at or near Castroville Station, in Monterey county, to a point at or near Monterey, in said county; thence northwesterly to a point at or near Pacific Grove Retreat, and thence southwesterly to a point near the mouth of Carmel River, an estimated length of thirty-one and twelve-hundredths (31.12) miles.

Fourth—From a point near San Miguel in San Luis Obispo county, in the State of California, there connecting with the railroad of the Southern Pacific Railroad Company, and running from thence in a general southeasterly direction through and into the Counties of San Luis Obispo, Santa Barbara, Ventura and Los Angeles, to a connection with the railroad of the Southern Pacific Railroad Company in said Los Angeles county, near Newhall, being about two hundred and fifty (250) miles in length.

Fifth—From a point at or near Martinez, in Contra Costa county, to Tracey, in San Joaquin county, a distance of forty-seven and fifty-eight hundredths (47.58) miles, more or less; thence from Tracey through the Counties of San Joaquin, Stanislaus, Merced, Fresno and Tulare, to a connection with the San Joaquin division of the railroad of the party of the first part, at or near Pampa, in the County of Kern, a distance of two hundred and sixty (260) miles, more or less, and aggregating three hundred and seven and fifty-eight hundredths (307.58) miles, more or less.

Sixth—From a point at or near Avon, in Contra Costa county, to a point on the Central Pacific Rail-

road at or near Pleasanton, in the County of Alameda, a distance of thirty-five miles, more or less.

Seventh—From a point at or near Oakdale, in Stanislaus county, through and into the Counties of Stanislaus, Merced, Fresno and Tulare, to a point at or near the town of Poso, in Kern county, a distance of two hundred (200) miles, more or less, with a branch connecting with the main line of the Central Pacific Railroad to or near Modesto, in Stanislaus county, a distance of sixteen (16) miles, more or less, a branch to or near Merced, in Merced county, a distance of ten (10) miles, more or less, a branch to or near Sycamore, in Fresno county, a distance of ten (10) miles, more or less, a branch to or near Fresno, in Fresno county, a distance of ten (10) miles, more or less, a branch to or near Tulare, in Tulare county, there connecting with the San Joaquin Division of the railroad of the party of the first part, a distance of sixteen (16) miles, more or less; said line and branches being two hundred and sixty-two (262) miles in length, more or less.

Eighth—From Berenda Station, in Fresno county, to a point at or near Perry's Ranch, in said county, a distance of twenty-five (25) miles, more or less.

Ninth—From a point at or near the City of Los Angeles, in the County of Los Angeles, to the towns of Anaheim and Santa Ana, in said county, and thence through the Counties of Los Angeles and San Diego to a point at or near the City of San Diego, in said last mentioned county, a distance of one hundred and forty (140) miles, more or less.

Tenth—From a point at or near the City of Los Angeles, to Santa Monica, in Los Angeles county, a

distance of eighteen and fifty hundredths (18.50) miles, more or less.

Eleventh—From a point at or near Long Beach in Los Angeles county, to Whittier, thence to Ramona, a distance of thirty (30) miles, more or less; also running from a point at or near Los Angeles to a point on the main line of the railroad of the party of the first part between El Monte and Puente, and thence north-easterly to a point on or near San Dimos Creek, a distance of thirty (30) miles, more or less; all in said County of Los Angeles, and aggregating sixty (60) miles in length, more or less.

Twelfth—From a point at or near Long Beach Junction, in Los Angeles county, to the town of Long Beach, thence easterly to the boundary line between the Ranchos Los Cerritos and Los Alamitos, in said county, a distance of four (4) miles, more or less.

Thirteenth—From a point on the line of the Wilmington Division of the railroad of the party of the first part, between the towns of Wilmington and San Pedro, in the County of Los Angeles, through said town of San Pedro to a point at or near Point Firmin, thence westerly through the lands of the San Pedro Harbor Dock and Land Association, to the westerly boundary of said lands, all in the County of Los Angeles, and being five (5) miles in length, more or less.

Fourteenth—From a point at or near Ramona, in Los Angeles county, to a point at or near Crafton, in San Bernardino county, a distance of seventy-one (71) miles, more or less.

Fifteenth—From the City of San Francisco, in a southerly and southeasterly direction, by way of

Carnadero Junction, Salinas Valley and Potrero Pass to Mojave Junction; also from Carnadero Junction to San Benito; also from Los Gatos Creek *via* Goshen to the junction with the first-mentioned line between Poso Creek and Kern River; also from the junction near Tehachapi Pass *via* Los Angeles to Yuma, in the County of San Diego; also from Los Angeles to Wilmington on San Pedro Bay, aggregating nine hundred and eight (908) miles of railroad and telegraph line, or thereabouts.

Including all the rights of way, roadway, track and tracks, together with all the superstructures, depots, depot grounds, station houses, watering places, side tracks, turnouts, turntables, weighing scales, locomotives, tenders, cars, rolling stock of all kinds, equipments, fixtures, tools, telegraph lines, and all other property which may now or hereafter be acquired for the purpose of operating the constituent lines of railroad hereby mortgaged, including all of the said property which now is or may hereafter, in whole or in part, be constructed or completed, purchased, acquired, held or owned by the said company, pertaining to that portion of the said lines of railroad hereby mortgaged, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging and appertaining, and the reversion and reversions, remainder and remainders, rents, incomes, issues and profits thereof, with all the rights, titles, interest, estate, property, succession, claim and demand, in law or equity, of the said party of the first part of, in and to the same, or any part or parcel thereof.

Also, all and singular the several sections of land so, as aforesaid, granted by said Acts of Congress, and also all the estate, right, title, interest, claim and demand whatsoever, at law or in equity, of, in or to the same, or any part or parcel thereof, which said party of the first part now has, holds, owns or is entitled to, or hereafter may or shall acquire, have, own or be or become entitled to by force or virtue of the said Acts of Congress, saving, excepting and reserving all parts and parcels of said lands which have been sold or contracted to be sold or disposed of heretofore, or which are or shall be included in the right of way of the railroads and telegraph lines of the said company, as defined and granted by the Acts of Congress aforesaid, or used for the construction and operation thereof, or for the track, yards, depot grounds, buildings or erections thereof.

To HAVE AND To HOLD, the above granted and described premises, property and franchises, with the appurtenances, unto the said party of the third part, and to its successors duly appointed, upon trust and for the use and benefit of the person or persons, body or bodies, politic or corporate, who shall have become or be from time to time holders of the said first mortgage bonds secured hereby, or any of them.

PROVIDED ALWAYS, and these presents are upon the express condition that if the said party of the first part, or its successors, shall well and truly pay, or cause or procure to be paid unto the holders, from time to time, of said bonds, and each and every one of them, the said sums of money secured to be paid by the said bonds, and the interest coupons attached thereto, at the places

and times, and in the manner set forth in the said bonds, according to the true intent and meaning thereof, then these presents, and the property, estate, rights, franchises and privileges herein and hereby granted and conveyed shall cease, determine and be void.

Until default shall be made by the said party of the first part, its successors and assigns, in the payment of the principal or interest of the said bonds or some of them, or some part thereof, as hereinafter provided, the said party of the first part, its successors and assigns, shall be suffered and permitted to possess and enjoy the said premises, with their appurtenances and all and singular the rights and franchises hereinbefore described, and to receive, take and use the tolls, income, earnings and profits thereof, and the Trustee or Trustees hereunder shall have full power in its or their discretion, upon written request of the party of the first part, its successors or assigns, to convey, by way of release or otherwise, and fully release from the lien of this mortgage, any lands or other property of any description (except only the lands granted by Acts of Congress, as hereinbefore prescribed), which in its or their judgment shall not be necessary for or for use in connection with the said railroads, and to consent to such changes in the location of tracks, depots and other buildings as in its or their judgment may be expedient, and to make and deliver the releases and conveyances necessary to carry the same into effect, but any lands or other property which may be acquired for permanent use in substitution for any so released or

conveyed, shall thereupon become subject to the lien of this mortgage, and upon request of the Trustee or Trustees hereunder shall be conveyed to it or them by the party of the first part, its successors or assigns, upon the trusts of these presents.

But if default shall be made in the payment of the said sums of money specified in said bonds, or in the payment of said interest coupons, or either of them, or any part thereof, and if the same shall remain unpaid for the period of six months from and after the time when the same should have been paid according to the terms of said bonds, then the said party of the third part, or its successor in said trust, by itself or its agents or servants, in that behalf, may, upon request of the holder or holders of not less than one-fourth of said bonds then outstanding, on which the interest or principal shall be and have so remained in default as aforesaid, entered into and upon and take possession of all, or in its or their discretion, any part of, the said constituent lines of railroad hereby mortgaged, and worked and operate the said constituent lines of railroad, and received the income, receipts and profits thereof and out of the same pay:

FIRST:

The expense of running and operating the same, including therein reasonable counsel fees and such reasonable compensation as it may allow to the several persons employed or engaged in the running and superintendence of the same.

SECOND:

The expense of keeping the said roads, the appurtenances, the locomotives and the rolling stock thereof in good and sufficient repair to prevent deterioration in the value thereof, and all other reasonable and proper charges and expenses of the care and management thereof.

AND, THIRD:

Pay as far as the same will suffice, all interest and principal, if any, which may be due on said bonds, and in case of any deficiency apply the said receipts, after the payment of all said charges and expenses, to the payment thereof, ratably, without preference of any kind.

Or the said party of the third part may, in case of default as aforesaid, and upon request as aforesaid, foreclose this mortgage, and sell and dispose of, according to law, all of the constituent lines of railroad hereby mortgaged, together with all of the rights, property, privileges, franchises, real and personal, connected therewith or pertaining thereto, that are subject to this mortgage, with the appurtenances herein and hereby granted, or so much as may be necessary, and out of the money arising from such sale, pay:

FIRST:

The cost and charges and expenses of the foreclosure and sale.

SECOND:

Any expenses, costs and charges of the execution of the trust, previously incurred and remaining unpaid.

AND, THIRD:

Distribute the residue of said proceeds among the holders of said bonds and coupons in proportion to their several interests, until all have been paid in full, principal and accrued interest.

If any default shall be made in the payment of interest on any of said bonds for six months, after demand at the place of payment, when the same shall become due, then the said Trustee may, on being requested by the holders of at least one hundred thousand dollars of such bonds, enter into and take possession of any of the lands above conveyed, and foreclose this mortgage thereon, and may sell at public auction upon like notice, as hereinafter prescribed, so much of said lands as may be necessary to discharge all arrears of such interest, and apply the proceeds, after deducting the costs, charges and expenses of such entry, foreclosure and sale, to the payment of such arrears of interest. If any such default shall continue for one year from the time of such demand and refusal, the principal sum of all bonds then outstanding shall become due and payable, and thereupon or upon default in the payment of the principal of such bonds at their maturity, the said Trustee may enter into and take possession of all the lands above by these presents mortgaged or conveyed, foreclose this mortgage thereon, and sell at public auction all said lands or so much thereof as may be necessary, first giving at least six months' previous notice of the time and place of sale in at least one newspaper published in the City of New York, and in one published in each of the Cities

of San Francisco, Sacramento, Los Angeles and San Diego; and they shall apply the proceeds thereof, after deducting the costs, charges and expenses of such last mentioned entry, foreclosure and sale, to the payment of all said bonds then outstanding, and the interest accrued thereon, rendering the surplus, if any there shall be, unto the said party of the first part.

In case of any sale upon any such foreclosure or at any such public auction, the said Trustee shall make, execute, and deliver a conveyance of the said lands so sold, which shall convey to the purchasers all the rights and privileges of the said party of the first part, in and to the property so sold, to the same extent as the same shall have been previously enjoyed and held by the said party of the first part.

If after any such entry shall be made or any foreclosure proceedings shall be commenced, for the satisfying of interest only, as above provided, and before the lands are sold thereon, the said party of the first part shall pay and discharge such interest and deliver the coupons therefor to the said Trustee, and pay all the costs, charges and expenses incurred in such entry and foreclosure, and the proceedings thereon; then and in every such case the said Trustee shall discontinue its proceedings thereon, and restore to said party of the first part all of such lands to be held subject to the above conveyance and mortgage, and subject to all the provisions, terms and conditions of these presents, in like manner as if such entry had not been made, nor such foreclosure proceedings commenced.

All lands granted or conveyed under the Acts of Congress hereinbefore referred to, and in anywise

covered or affected by the provisions hereof, shall be subject to the express provision that if and so long as the bonds issued under and secured by the said indenture of mortgage to D. O. Mills and Lloyd Tevis, dated April 1, 1875, or any thereof, shall remain outstanding, any and all sales made in the manner in said last mentioned indenture of mortgage prescribed, shall absolutely and forever release the said lands from any and all lien or encumbrance of, under or in respect of this mortgage or the bonds issued thereunder; and if and when all the bonds issued under said indenture of mortgage of April 1, 1875, shall have been fully satisfied and discharged, and the lien of such last-mentioned indenture of mortgage upon such lands fully released, then the said lands, so far as they remain unsold at that time, shall be subject to the like provisions in respect to sale and conveyance, and release from the lien of this mortgage, as are in said mortgage of April 1, 1875, prescribed in respect to sale and conveyance, and release from the lien thereof.

THIS INDENTURE FURTHER WITNESSETH: That said party of the first part hereby agrees and covenants to and with said party of the third part that it will create a sinking fund for the redemption and payment of said bonds, by setting apart the sum of twenty thousand dollars of the net income derived by it from the constituent lines of railroad herein mortgaged, in the year 1898 (?) and in each year thereafter, until all of said bonds, principal and interest, shall be redeemed or paid, in trust, to be loaned out at interest upon good securities, or otherwise invested under

the order and direction of the Board of Directors of the party of the first part, or used to redeem said bonds as often as twenty thousand dollars shall come into the sinking fund; in which case notice shall be published in one daily paper in the City of New York, and one daily paper in the City of San Francisco, for such length of time as said Board of Directors may order that said bonds will be redeemed, and inviting bids for the surrender thereof, at prices to be named, the lowest bids to be accepted, and bonds redeemed to the extent of the money in the sinking fund.

AND THIS INDENTURE FURTHER WITNESSETH: That the said party of the first part hereby agrees and covenants to and with the said party of the third part, and its successors in said trust, that it will pay all ordinary and extraordinary taxes, assessments, and other public burdens and charges which shall or may be legally imposed upon the property herein described and hereby mortgaged, and every part thereof, and the said party of the third part, or its successors in said trust, or any one or more of the holders of said bonds, may, in case of default of the said party of the first part in this behalf, pay and discharge the same, and any other lien or incumbrance upon said property which may in any way, either in law or equity, be or become in effect a charge or lien thereon prior to these presents, or to which this mortgage may be subject or subordinate, and for all payments thus made, the parties so making the same shall be allowed interest thereon at the rate of six per cent. per annum, and such payments, with the interest thereon, shall be and are hereby secured to them by these presents, and

declared to be payable and collectable in the same sort of currency or money wherein they shall have been paid, and the same shall be payable by said party of the first part to said party of the third part, upon demand, in trust for the party or parties paying the same, and may be paid out of the proceeds of the sale of said property and franchises hereinbefore provided.

AND THIS INDENTURE FURTHER WITNESSETH, That the said party of the first part further covenants and agrees to and with the said party of the third part, and its successors in said trust, that it will at any and all times hereafter upon the request of the said party of the third part, execute, acknowledge, and deliver to the said party of the third part, and its successors in said trust, all and every such further necessary and reasonable conveyances and assurances of the said premises, or any part thereof, as may by the party of the third part, or its successors in the trust hereby created, be reasonably advised or required for more fully carrying into effect the objects of this conveyance.

And the said party of the third part, and its successors in said trust, shall be entitled to receive a just and proper compensation for all services rendered by it or them in the discharge of said trust, and the same shall be deemed to be secured hereby. And it is hereby stipulated and agreed, that the said party of the third part, and its successors in said trust, shall not be responsible for the acts or omissions of any agent or agents employed by it or them in any manner, in and about the execution of the trust hereby created, when such agent or agents are selected with

reasonable discretion, or with the approbation or with the knowledge and without the express disapprobation of said party of the first part.

THIS INDENTURE FURTHER WITNESSETH, That should the said party of the third part for any reason fail, refuse or become incompetent to discharge the duties or trusts herein conveyed to, imposed on and accepted by it, then and in that event the Board of Directors of the party of the first part shall nominate and appoint a successor or successors to said party of the third part, which said successor or successors shall be vested with the same properties and clothed with the same powers, rights and duties, and be subject to the same obligations as the said party of the third part named herein, as fully as though he, they or it had been named herein as such trustee or trustees.

AND THIS INDENTURE FURTHER WITNESSETH, That the party of the first part hereby agrees to take up, pay off, discharge and retire the outstanding bonds of the Pajaro and Santa Cruz Railroad Company in the sum of five hundred and thirty thousand dollars, (\$530,000); the outstanding bonds of the Monterey Railroad Company in the sum of two hundred and twenty thousand dollars (\$220,000); the outstanding bonds of the San Pablo and Tulare Railroad Company, in the sum of one million and twenty-three thousand (\$1,023,000) dollars; and the outstanding bonds of the Los Angeles and San Diego Railroad Company, in the sum of five hundred and fifty-six thousand (\$556,000) dollars, and to destroy, cancel and retire all of said bonds unissued and in its hands, and cause said exist-

ing mortgages to be satisfied of record and canceled, and to take up said outstanding bonds with the new fifty-year five per cent. bonds to be issued under this mortgage, upon such terms as may be agreed upon, said redemption and cancellation and satisfaction to be made without unnecessary delay.

IT IS FURTHER PROVIDED, COVENANTED, DECLARED AND AGREED, That the party of the third part and its successors in the trust hereby created is and are from time to time to authenticate and certify as issued hereunder and "deliver to the party of the first part, its successors or assigns, first mortgage bonds, in the form or substantially the form above prescribed, to amounts which shall aggregate, but shall not exceed, twenty-two thousand five hundred dollars par value of such bonds per mile for each mile of road constructed or acquired by the said party of the first part, its successors or assigns, and described in the foregoing thirteen subdivisions hereof designated from "First" to "Third," both inclusive, and from "Fifth" to "Fourteenth," both inclusive, and for twenty-five miles in addition thereto; and to further amounts not exceeding seven thousand five hundred dollars per mile additional thereto for expenses and disbursements incurred in and about double tracking, masonry, iron bridges, rolling stock or other betterments or improvements either to the permanent way, local or terminal facilities or rolling stock. The said party of the third part, and its successors in the trust hereby created, is and are also from time to time to authenticate and certify as issued hereunder and delivered to the party of the first part, its successors and

assigns, additional first mortgage bonds in the form or substantially the form above prescribed to the amounts to which the bonds of the Southern Pacific Branch Railway Company issued or to be issued, under and secured by the mortgage of November 24, 1886, hereinbefore referred to, shall have been deposited with the Trustee hereunder.

All bonds so deposited with the Trustee hereunder shall be held as collateral security for the bonds issued under this mortgage until all of the bonds issued under and secured by such mortgage of the Southern Pacific Branch Railway Company shall have been so deposited, whereupon such deposited bonds shall be canceled, and the mortgage securing the same shall be satisfied of record. While such Southern Pacific Branch Railway Company's bonds remain so on deposit with the Trustee, neither such bonds nor the coupons appertaining thereto shall be required to be paid unless proceedings shall be taken for the foreclosure of the mortgage securing the same, in which case all the bonds and coupons which shall have been so deposited with the Trustee shall be entitled to share, for the benefit of the bonds issued under this mortgage, on equal terms with the other bonds issued under and secured by said Southern Pacific Branch Railway Company mortgage.

When said Southern Pacific Branch Railway Company mortgage shall have been satisfied of record, the party of the first part, its successors and assigns, shall be entitled from time to time to receive from the Trustee hereunder, duly authenticated, as issued under and secured by this mortgage, bonds in respect of the line

described in the foregoing subdivision "Fourth" hereof, on the mileage basis of \$22,500 and \$7,500 as above prescribed in respect of the lines described in subdivisions "First" to "Third," both inclusive, and from "Fifth" to "Fourteenth," both inclusive, due allowance being made on the basis of \$30,000 per mile for the bonds theretofore issued against deposit of said Southern Pacific Branch Line bonds.

Authenticating certificates to such bonds are to be signed, and deliveries thereof to be made by the Trustee under this mortgage from time to time upon presentation to it of certificates in writing, executed by the President and Chief Engineer of the party of the first part, or its successors, reciting the facts authorizing delivery of such bonds hereunder and without other evidence or proof of such facts. *Provided, however,* that notwithstanding anything herein contained, the party of the first part or its successors may at any time, or from time to time, require the party of the third part or its successors, to authenticate and certify hereunder and deliver to said party of the first part, its successors or assigns, and permit the sale of such amount or amounts of such bonds as the party of the first part, or its successors, may think fit; *provided*, that the proceeds of any such bonds issued in excess of the limits hereinabove prescribed shall be received by the Trustee or Trustees hereunder and not by the party of the first part or its successors or appointees, and shall be disbursed by said Trustee or Trustees to the party of the first part or its successors or appointees, only *pro rata*, as and when the party of the first part or its

successors would have been entitled to receive such bonds under the foregoing provisions hereof; and, *provided further*, that the total amount of bonds issued under or secured by this deed of trust is not in any event to exceed for all purposes herein mentioned the aggregate sum of thirty-eight million dollars.

IN WITNESS WHEREOF, the said Southern Pacific Railroad Company, the party of the first part, has caused these presents to be signed in its name by its President and attested by its Secretary, and sealed with its corporate seal.

SOUTHERN PACIFIC RAILROAD COMPANY,

By Chas. F. Crocker, President.

Attest: J. L. Willeutt,
(Seal.) Secretary.

The Southern Pacific Company, party of the second part, the lessee of portions of the said Southern Pacific Railroad affected by the foregoing instrument, does hereby consent thereto, and hereby waives any and all objection it might or could have to the execution thereof, or to the issuance of the bonds therein provided for, provided that nothing in this consent or assent contained shall be construed as a grant of any of the property rights of said Southern Pacific Company, or of its franchises, to the mortgagee or Trustee named herein.

IN TESTIMONY WHEREOF, said Southern Pacific Company has caused these presents to be signed in its

name by its Third Vice-President, and attested by its Secretary, and its corporate seal to be hereunto affixed this 25th day of August, 1888.

SOUTHERN PACIFIC COMPANY,

By Chas. F. Crocker, Third Vice-President.

Attest: G. L. Lansing,

(Seal.) Secretary.

The Central Trust Company, of New York, party of the third part to the foregoing mortgage or deed of trust, hereby accepts the trust created and declared in and by the foregoing instrument, and agrees to discharge the same pursuant to the provisions in that behalf therein contained.

IN TESTIMONY WHEREOF, said Central Trust Company of New York has caused these presents to be signed in its name by its Second Vice-President and attested by its Assistant Secretary, and its corporate seal to be hereunto affixed this seventh day of September, 1888.

CENTRAL TRUST COMPANY OF NEW YORK,

By E. Francis Hyde, Second Vice-President.

Attest: B. G. Mitchell,

(Seal.) Asst. Secretary.

STATE OF CALIFORNIA,

City and County of San Francisco. } ss.

I, J. F. Kingwell, a Notary Public in and for the City and County of San Francisco, State of California, residing in said city and county, duly commissioned and sworn, do certify that on the 25th day of August,

A. D. 1888, personally appeared before me, in said city and county, Charles F. Crocker, President of the Southern Pacific Railroad Company, and J. L. Wilett, Secretary of the Southern Pacific Railroad Company, who are both personally known to me to be the said officers of the said Southern Pacific Railroad Company respectively, and the individuals described in and who have executed the foregoing instrument as such officers of said company, and they each severally and personally then and there acknowledged to me that they executed the said instrument as the free act and deed of the said Southern Pacific Railroad Company, freely and voluntarily, and for the uses and purposes therein mentioned, and the said J. L. Willett, with whom I am personally acquainted, being duly sworn, did depose and say: That he resides in the City of Oakland, County of Alameda, and State of California; that he is and was the Secretary of the Southern Pacific Railroad Company at the date and time he executed the foregoing instrument; that he knows the corporate seal of said company, and is and was at the date of execution of said instrument the legal custodian of said seal; that the seal affixed to the foregoing instrument was and is such corporate seal, and was by him so affixed by order of the Board of Directors of said Southern Pacific Railroad Company; that he signed his name thereto as Secretary of said company by the like order. And the said J. L. Willett further said, that he was acquainted with Charles F. Crocker, and knows that said Charles F. Crocker is and was President of the Southern Pacific Railroad Company at the date and

execution of said instrument; that the signature of the said Charles F. Crocker subscribed to said instrument is in the genuine handwriting of the said Charles F. Crocker, and was thereto by him subscribed by the like order of the Board of Directors of said company, and in the presence of him, the said deponent.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(Seal)

J. F. KINGWELL,

Notary Public in and for the City and County
of San Francisco, California.

STATE OF CALIFORNIA,

City and County of San Francisco.

} ss.

On this twenty-fifth (25) day of August, in the year one thousand eight hundred and eighty-eight (1888), before me, J. F. Kingwell, a Notary Public in and for the said City and County of San Francisco, State of California, duly commissioned and qualified, personally appeared Chas. F. Crocker, known to me to be the 3rd Vice-President of the Southern Pacific Company, and G. L. Lansing, known to me to be the Secretary of the Southern Pacific Company, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, this 25th day of August,
A. D. 1888.

(Seal)

J. F. KINGWELL,

Notary Public in and for the City and County
of San Francisco, State of California.

STATE OF NEW YORK,
City and County of New York, } ss.

On this 7th day of September, in the year 1888, before me, Charles Edgar Mills, a Commissioner of the State of California, in and for the State of New York, residing in said City of New York, personally appeared E. Francis Hyde and Benjamin G. Mitchell, known to me to be the Second Vice-President and Assistant Secretary of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

In WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, this 7th day of September, A. D. 1888.

(Seal) CHARLES EDGAR MILLS,
Commissioner for California in New York,
115 and 117 Broadway, N. Y. City.

[Endorsed]: Southern Pacific Railroad Company, of the first part, Southern Pacific Company, of the second part, and Central Trust Company, of New York, of the third part. Deed of Trust. Dated August 25, 1888.

Recorded at the request of H. D. La Motte, Oct. 2nd, A. D. 1888, at 30 minutes past 4 p. m., in Liber No. 21 of Mortgages, page 10, Records of San Mateo Co., Cal.

E. EIKERENKOTTER, Recorder.
By Claude Fox, Deputy Recorder.

Recorded at request of H. D. La Motte, in Book 84 of Mortgages, page 319, *et seq.*, Oct. 3d, 1888, at 14

min. past 9 o'clock A. M., Records of Santa Clara Co., Cal.

P'd \$19.00.

CHAS. P. OWEN,
County Recorder.

Filed for record at the request of H. D. La Motte, Oct. 3, A. D. 1888, at 1 o'clock p. m., and recorded in Vol. 1 of Trust Deeds, page 123, San Benito County Records.

P'd \$19.

R. SHAW, Recorder.

By Robt. Shaw, Deputy Recorder.

Filed for record at the request of H. D. La Motte, Oct. 4, A. D. 1888, at 9 o'clock A. M., and recorded in Vol. 54 of Mortgages, page 83, Oct. 4, 1888, Santa Cruz County Records.

Paid \$19.

ED. MARTIN,
County Recorder.

Recorded at the request of H. D. La Motte, Oct. 4th, 1888, at minutes past 2 p. m., in Record A of Trust Deeds, page 409, Monterey County, Cal.

Recorder's Fees, \$19.00.

DAVID WALLACE,
County Recorder.

Recorded at request of H. D. La Motte, Oct. 6, 1888, at 30 minutes past 8 o'clock A. M., in Book "P" of Mortgages, at page 513, et seq., San Luis Obispo County Records.

(Seal)

\$18.50.

F. E. DARKE, Recorder,
By F. E. Darke, Jr., Deputy.

Recorded at request of H. D. La Motte, at 25 min. past 10 a. m., Oct. 8, 1888, in Book W of Mortgages, page No. 1, Records of Santa Barbara County, Cal.

Pd. \$18.50.

C. A. STUART,
County Recorder.

Recorded at the request of H. D. La Motte, Oct. 9th, A. D. 1888, at 8 min. past 9 o'clock a. m., in Book 11 of Mortgages, page 56, Records of Ventura Co., Cal.

\$16.75 pd.

L. F. EASTIN, County Recorder,
By Fred. Hund, Deputy Recorder.

Recorded at request of H. D. La Motte, Oct. 10, 1888, at 48 min. past 8 a. m., in Book 179, page 74 of Mortgages, Los Angeles County Records.

Fees, \$12.90.

FRANK A. GIBSON, County Recorder.
By Arthur Bray, Deputy.

Recorded at request of H. D. La Motte, Oct. 11, 1888, at 8 min. past 8 a. m., in Book 11 of Mortgages, page 129, Records San Bernardino County.

\$18.50, paid.

LEGARE ALLEN, County Recorder.
By Gordon G. Ives, Deputy Recorder.

Received for record Oct. 12, 1888, at 9 o'clock a. m., at request of H. D. La Motte, and recorded in Book

No. 43 of Mortgages, page 1, et seq., San Diego Co., Cal.

Fees, \$23 50 pd.
Comparing, 3

26 50 pd.

E. G. HAIGHT, County Recorder.
By B. F. Moore, Deputy.

Recorded at request of H. D. La Motte, Oct. 13th, 1888, at 25 min. past 9 o'clock, a. m., in Book 8 of Mortgages, page 376, Records of Kern County.

Fees, \$20.00 paid.

N. R. PACKARD, County Recorder.
By F. A. Shedd, Deputy.

Recorded at request of H. D. La Motte, at 43 min. past 7 a. m., October 15th, 1888, in Vol. "4" of Trust Deeds, page 446, et seq., Records of Tulare County, Cal.

Fees, \$20.00 pd.

W. F. THOMAS, County Recorder.

Recorded at request of H. D. La Motte, at 45 minut. past 1 p. m., Oct. 15th, 1888, in Vol. "86" of Deeds of Fresno County Records, pp. 195, et seq.

\$20.

C. L. WAINWRIGHT, Recorder.

Recorded at request of H. D. La Motte, October 16th, 1888, at 40 min. past 8 a. m., in Book "P" of Mortgages, page 106, Records of Merced County.

\$20 Paid.

J. G. ELLIOTT, County Recorder.

Recorded at request of H. D. La Motte, October 16th, 1888, at 25 min. past 1 p. m., in Liber 35, Deeds of Trust, page 65, Records of Stanislaus County.

Fee \$10.50.

C. S. ABBOTT, County Recorder.
By E. E. Howard, Deputy.

Recorded at the request of H. D. La Motte, October 17th, 1888, at 40 minutes past 12 o'clock m., in Book "N" of Mortgages, page , Calaveras County Records.
\$20.00.

A. L. WYLLIE, Recorder.
By Edw. Casey, Deputy.

Recorded at request of H. D. La Motte, October 18th, 1888, at 35 min. past 10 o'clock a. m., in Book "A", Vol. 64, page 458 of Deeds, San Joaquin County Records.

\$20.00 Paid.

(Seal.) J. F. MOSELEY, County Recorder.
By G. E. Housken, Deputy.

Recorded at request of H. D. La Motte, October 18th, a. d. 1888, at 30 min. past 4 p. m., in Vol. 54 of Deeds, page 267, Records of Contra Costa County.

\$17.50 pd.

C. S. COUSINS, County Recorder.
By A. E. Dunkel, Deputy Recorder.

Recorded in the office of the County Recorder of the City and County of San Francisco, Oct. 24, 1888, at 45

min. past 9 o'clock, a. m., in Liber 1320 of Deeds,
page 85.

A. T. SPOTTS, County Recorder.
By C. H. McCourtney, Deputy.

Recorded Oct. 26th, 1888, at 46 min. past 3 p. m.,
in Liber 302 of Mortgages, page 1, Records of Alameda
County.

F. D. HINDS, County Recorder.

Recorded in the office of the County Recorder of
the City and County of San Francisco, Oct. 27th,
1888, at 25 min. past 10 o'clock a. m., in Liber 890 of
Mtgs., page 283.

A. T. SPOTTS, County Recorder.

[Endorsed]: Deed of Trust. Southern Pacific Railroad Company, of the first part, Southern Pacific Company, of the second part, and Central Trust Company of New York, of the third part. Dated August 25, 1888. Received May 31st, 1893. Wm. M. Van Dyke, Clerk. Filed Jun. 12, 1893. Wm. M. Van Dyke, Clerk.

U. S. v. S. P. et. als. 184. Respds. Exhibit "G 1"

(Attached to Amended Answer to Amended Bill.)

G. 30. (10-17-90—2,000.)

SOUTHERN PACIFIC RAILROAD COMPANY.
LAND DEPARTMENT.

No.

THIS AGREEMENT, made at San Francisco, California, this day of A. D. 189 , between the Southern Pacific Railroad Company, party of the

first part, and.....of the County
of....., State of California, part.....of
the second part,

WITNESSETH: That the party of the first part, in consideration of the covenants and agreements of the party.....of the second part, hereinafter contained, agrees to sell to the party.....of the second part, the following tract ...of land, situated in the County of , State of California, and known and designated on the public surveys of the United States as

of Section Township
 Range Base and Meridian, con-
 taining acres,
 for the sum of ¹⁰⁰
 Gold Coin in the United States. ¹⁰⁰

and com in the United States.

And the party.....of the second part, in consideration of the premises, agree....to buy the land hereinbefore described, and to pay to the party of the first part, the said sum of

Dollars,
100

as follows, to wit: Dollars,
100

and also \$....., one year's interest in advance on the remainder, in United States Gold Coin, of the present standard of value, on the execution of this contract (which two last-mentioned sums have this day been fully paid), and the remainder, to wit: the sum of..... Dollars,
¹⁰⁰

with interest thereon, annually in advance, at the rate of seven per cent. per annum, both in United States Gold Coin, of the present standard of value, at its office in the City and County of San Francisco, on or before theday of189 ; and, also, to pay all taxes and assessments that may at any time be levied or imposed upon said premises, or any part thereof, and if the partof the second part shall fail to pay such taxes or assessments, or any part thereof, at any time when the same shall become due, then the said party of the first part may pay the same; and all sums so paid by the party of the first part shall be added to and become part of the unpaid remainder, and shall bear interest at the same rate, and be paid in the same manner and at the same time and place hereinbefore provided for the payment of said remainder and the interest thereon.

IT IS FURTHER AGREED, that upon the punctual payment of said purchase money, interest, taxes and assessments, and the strict and faithful performance by the partof the second part,legal representatives or assigns, of all the agreements herein contained, the party of the first part will, after the receipt of a patent therefor from the United States, upon demand and the surrender of this instrument, execute and deliver to the part... of

the second part, heirs and assigns, a grant, bargain and sale deed of said premises, reserving all claim of the United States to the same as mineral land, and also reserving therein to the party of the first part, for railroad purposes, a strip of land one hundred feet wide, lying equally on each side of the track of the railroad of said Company, and all branch railroads now or hereafter constructed thereon, and the right to use all water needed for the operating and repair of said railroads.....

and with the condition that the part ... of the second part, heirs and assigns, shall erect and forever maintain good and sufficient fences on both sides of said strip or strips of land.

IT IS FURTHER AGREED, That until the full payment of said purchase money, interest, taxes and assessments, no strip or waste shall be made on said premises, and that no wood or growing trees shall be cut thereon, except for necessary fuel for the family of the legal occupant under this contract, and for the erection of buildings or fences on said land, without the previous written consent of the party of the first part.

IT IS FURTHER AGREED, That the part ... of the second part may at once enter upon, take and hold possession of said premises, provided, however, that if the part ... of the second part shall fail to make any of said payments of remainder, or interest, taxes, or assessments as herein provided, or shall fail to comply strictly with any of the stipulations of this contract, then this right shall cease, and the party of the first part, its successors or assigns,

may without notice, enter upon, take and hold possession of the said premises with all the improvements thereon.

IT IS FURTHER AGREED, between the said parties hereto, that the party of the first part claims all the tracts hereinbefore described, as part of a grant of lands to it by the Congress of the United States; that patent has not yet issued to it for said tracts; that it will use ordinary diligence to procure patents for them; that, as in consequence of circumstances beyond its control, it sometimes fails to obtain patent for lands that seem to be legally a portion of its said grant, therefore, nothing in this instrument shall be considered a guarantee or assurance that patent or title will be procured; that in case it be finally determined that patent shall not issue to said party of the first part for all or any of the tracts herein described, it will, upon demand, repay (without interest), to the part.....of the second part, all moneys that may have been paid to it by.....on account of any such tracts as it shall fail to procure patent for, the amount of repayment to be calculated at the rate and price per acre, fixed at this date for such tracts by said party of the first part, as per schedule on page 3 hereof; that said lands being unpatented, the party of the first part does not guarantee the possession of them to the part.....of the second part, and will not be responsible to.....for damages or cost in case of.....failure to obtain and keep such possession.

IT IS FURTHER AGREED, that if the party of the first part shall obtain patent for part of the lands herein described, and shall fail to obtain patent for the remainder of them, this contract shall in all its pro-

visions be and remain in full force and virtue as to the tracts patented, and shall, except as to repayments herein provided for, be null and void as regards those tracts for which it shall be finally determined that patents cannot be obtained.

IT IS FURTHER AGREED, that the part.....of the second part will never deny that the tracts herein described, or any part of them, are a part of said grant, and will do no act to hinder, delay or impede the obtaining of patent for them by the party of the first part, and that.....will not obtain or hold possession of all or any of them adversely to said party of the first part.

IT IS FURTHER AGREED, that this Contract shall not be assignable, except by endorsement, and with the written consent of the party of the first part and the written promise of the assignee.....to perform all the undertakings and promises of the part.....of the second part as above set forth.

IT IS FURTHER AGREED, that the part.....of the second part shall pay \$3.00 for expenses of the acknowledgments to the deed that shall be issued on this Contract.

IN TESTIMONY WHEREOF, the party of the first part has caused these presents to be signed in duplicate by its Secretary and Land Agent, and the part.....of the second part ha.... signed.....name.....hereto.

.....
Land Agent S. P. R. R. Co.

.....
Secretary S. P. R. R. Co.

..... (Seal.)

..... (Seal.)

Schedule of prices at which the lands described in
this contract have been sold, this.....day of
....., 189.....

....., the part..... of the second part in the within Contract No....., for and in consideration of.....

..... Dollars, to..... in hand paid, do hereby sell, assign, and transfer All..... right, title, interest and claim in and to the within described tract or parcel of land, and the within Contract....., unto h..... heirs and assigns forever, subject to the stipulations and conditions therein contained, which are to be performed by said assignee.

Given under.....hand and seal, this.....day of..... A. D. 18....

..... (Seal.)

..... (Seal.)

STATE OF CALIFORNIA, }
County of } ss.
.....

On this.....day of..... in the year one thousand eight hundred and.....before me, a.....in and for said County, personally appeared..... known to me to be the person whose name..... subscribed to the above instrument, and acknowledged to me that..... executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

.....
Notary Public.

On this day of 18....., in consideration of the above and foregoing assignment to me, hereby agree with the assignor therein named and with the Southern Pacific Railroad Company, to do and perform all the stipulations and conditions in the within Contract required to be done and performed by the part.....thereto of the second part.

..... (Seal.)

..... (Seal.)

P. O. Address.....

San Francisco, Cal., 18.....

The Southern Pacific Railroad Company hereby consents to the above assignment to

.....
By

Its Land Agent.

[Endorsed]: Unpatented Lands No..... Contract for a Deed. Southern Pacific Railroad Company To..... Dated.....
189 . Interest, \$..... due on the day of of each year. Remainder of principal \$..... due on the day of
189 . Received June 5, 1893. Wm. M. Van Dyke, Clerk. Filed Jun. 12, 1893. Wm. M. Van Dyke, Clerk.

U. S. v. S. P. et als. 184. Respds. Exhibit "G2"
(Attached to Amended Answer to Amended Bill.)

G. 326. (6-29-87-1,000.)

SOUTHERN PACIFIC RAILROAD COMPANY.

LAND DEPARTMENT.

No.....

ARTICLE OF AGREEMENT, made at San Francisco,
California, this.....day ofA. D. 18...,
between the Southern Pacific Railroad Company,
party of the first part, and.....of
.....County, State of.....part....of
the second part.

The said party of the first part, in consideration of the agreements of the said part.....of the second part, herein contained, hereby agrees to sell unto the said part..... of the second part, the following Tract..... of Land, situate in the County of..... State of California, to wit: and known and designated on the public surveys of the United States as.....

of Section No., in Township., of
Range. Base and Meridian, con-
taining. Acres, for the sum of.

100

Dollars, United States Gold Coin, of which
100 sum the said part.....of the second part ha.....this
day paid the sum of.....Dollars,

with, Dollars,
one year's interest on the remainder of said purchase
money; the remainder of said principal sum, amount-
ing to Dollars, United States
Gold Coin, with interest thereon annually in advance,
at the rate of seven per cent. per annum, to be paid
by the said part of the second part on or before
the day of
18.....

And the said party of the first part hereby further
agrees that upon the punctual payment of said pur-
chase money and interest, and the strict and faithful
performance by the said part of the second part,
legal representatives or assigns, of all the agreements
herein contained, then the said party of the first part
will cause to be made and executed to the said
part of the second part heirs and assigns
upon request and surrender of this contract, a deed of
grant, bargain and sale, for the conveyance of said
premises, reserving, however, for railroad purposes, a
strip of land one hundred feet wide, lying equally on
each side of the track of the railroad of said Company,
and all branch railroads now or hereafter constructed
thereon, and the right to use all water needed for the
operating and repair of said railroads, and subject also
to the reservation and condition, that the said pur-
chaser, heirs and assigns, shall erect and
maintain good and sufficient fences on both sides of
said strip or strips of land, and also reserving all claim
of the United States to the same as mineral land.

And the said part.....of the second part hereby agree.....to pay to the said Southern Pacific Railroad Company, its successors or assigns, the said sum of Dollars, United States

¹⁰⁰

Gold Coin of the present standard of value, with interest thereon, annually in advance, at the rate of seven per cent. per annum, at its offices in the City of San Francisco, on or before the.....day of

.....18....., both principal and interest payable in United States Gold Coin of the present standard of value, and until the full payment of said purchase money and interest, will permit no strip or waste to be made on said premises, and no wood or growing trees to be cut thereon, except for necessary fuel for the family of the legal occupant under this contract, and for the erection of buildings or fences, without the previous written consent of the said party of the first part. And if the said part... of the second part shall fail to make punctually any of said payments of interest or principal, or shall fail to comply strictly with any of the stipulations of this contract, then the said party of the first part, its successors or assigns, shall have the right to enter upon and take possession of the said premises, with all the improvements thereon.

It is further mutually agreed and understood, that the said part... of the second part shall have the immediate possession and enjoyment of said premises, and, if the same be in the adverse possession of a third party, the right to use at his own cost and charge the name of the party of the first part to recover the same by action. And that in considera-

tion of such possession and enjoyment he will pay all taxes and assessments that may be, at any time, imposed upon said premises. And it is further agreed that, should said part... of the second part fail to pay such taxes or assessments, or any part thereof, at any time when the same shall become due, the said party of the first part may pay the same and add the amount thereof to the price to be paid for said premises, and such taxes or assessments, with interest at the rate of seven per cent. per annum, shall be paid before said part... of the second part shall be entitled to a conveyance of said premises.

The part... of the second part hereby agrees to pay \$3.00 for expenses of the acknowledgments to the Deed that shall be issued on this Contract.

This Contract shall not be assignable, except upon the consent of said party of the first part, and the written promise of the assignee... to perform all the undertakings and promises of the said part... of the second part, as above set forth.

IN TESTIMONY WHEREOF, The said party of the first part has caused these presents to be signed in duplicate by its Secretary and Land Agent, and the said part... of the second part ha... signed name... hereto.

..... Land Agent.

..... Secretary.

..... (Seal.)

..... (Seal.)

....., the part... of the second part in the within Contract, No...., for and

in consideration of Dollars,
to in hand paid, do hereby sell, assign and transfer All right, title, interest and claim in and to the within described tract or parcel of land, and the within Contract, No unto ,
..... heirs and assigns forever, subject to the stipulations and conditions therein contained, which are to be performed by said assignee.

Given under hand and seal, this day of A. D. 18

..... (Seal.)

..... (Seal.)

STATE OF CALIFORNIA, }
..... County of } ss.

On this day of , in the year one thousand eight hundred and , before me, , a in and for said County, personally appeared , known to me to be the person ... whose name subscribed to the above instrument, and acknowledged to me that executed the same.

In WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

.....
Notary Public.

On this day of ,
18, in consideration of the above and foregoing assignment to me, hereby agree with the assignor therein named and with the Southern Pacific Rail-

road Company, to do and perform all the stipulations and conditions in the within contract, required to be done and performed by the part thereto of the second part.

(Seal)

(Seal)

P. O. Address,

San Francisco, Cal. 18.....

The Southern Pacific Railroad Company hereby consents to the above assignment to.....

B

Its Land Agent.

[Endorsed]: No Contract for a Deed.
Southern Pacific R. R. Company to
Dated..... 18 Interest, \$, due
on the day of of each year.
Remainder of principal, \$, due on the
..... day of 189 Received
June 5, 1893. Wm. M. Van Dyke, Clerk. Filed Jun.
12, 1893. Wm. M. Van Dyke, Clerk.

U. S. v. S. P. et als. 184. Respds. Exhibit "H."
(Attached to Amended Answer to Amended Bill.)

G. 362. (6-15-87-500.)

Quitclaim Deed No

To ALL TO WHOM THESE PRESENTS SHALL COME:

The Southern Pacific Railroad Company, a corporation duly incorporated and organized under the laws

of the State of California, and D. O. Mills and Gerrit L. Lansing, Trustees, of all the lands of the said Southern Pacific Railroad Company, lying in the State of California, which remained unsold on the first day of April, A. D. 1875, send Greeting:

WHEREAS, on the first day of April, A. D. 1875, the said Southern Pacific Railroad Company conveyed all its lands lying in the State of California then unsold, of which the lands hereinafter described were and are a part, to D. O. Mills and Lloyd Tevis, to hold in trust as security for the payment of forty-eight thousand bonds, forty-four thousand thereof for the sum of one thousand dollars each, and four thousand thereof for the sum of five hundred dollars each, issued and to be issued by said Southern Pacific Railroad Company in seven series, to be designated by the letters of the alphabet, commencing with the letter A, and followed by the succeeding letters in regular order to and including the letter G; Series A to consist of thirteen thousand bonds for one thousand dollars each, numbered from one to thirteen thousand, both inclusive, and four thousand bonds for five hundred dollars each, numbered from thirteen thousand and one to seventeen thousand, both inclusive; Series B to F, both inclusive, to consist of five thousand bonds each, for one thousand dollars each, numbered from seventeen thousand and one to forty-two thousand, both inclusive; Series G to consist of six thousand bonds for one thousand dollars each, numbered from forty-two thousand and one to forty-eight thousand, both inclusive; all of said

bonds payable thirty years after date, with interest at the rate of six per centum per annum, payable semi-annually, said series A to bear date April first, eighteen hundred and seventy-five, and the said several succeeding series to bear such dates respectively as the Board of Directors of said Southern Pacific Railroad Company direct; all of said bonds aggregating the sum of forty-six millions of dollars.

AND, WHEREAS, Said Deed of Trust, among other matters, provided that the said Southern Pacific Railroad Company should have the sole and exclusive control and management of said lands, with full power to make sales of the same upon such terms and conditions as might, from time to time, be agreed upon between the said Railroad Company and the said Trustees; and that when such sales had been made, and the purchase money fully paid, the said company and the said Trustees should unite in a conveyance in fee simple of the lands so sold to the purchaser or purchasers thereof, which conveyance should absolutely and forever release the lands so conveyed from any and all lien or incumbrance for or on account of said bonds, or any other debt or obligation of the said Railroad Company.

AND, WHEREAS, On the 24th day of March, 1883, Lloyd Tevis, one of the Trustees, did resign his trust under said conveyance of the first of April, 1875; and, whereas, on the 3rd day of April, 1883, the said D. O. Mills, the remaining Trustee under said conveyance, did, pursuant to the terms of his trust, nominate Gerrit L. Lansing, of the City of

San Francisco and State of California, to fill the vacancy caused by the resignation of said Lloyd Tevis.

AND, WHEREAS, On the 17th day of April, 1883, the Board of Directors of the said Southern Pacific Railroad Company, pursuant to the terms of said trust, did ratify and approve said nomination, and did appoint said Gerrit L. Lansing to fill said vacancy; and whereas, on the 18th day of April, 1883, the said Gerrit L. Lansing did formally accept the position of Trustee under said Deed of Trust.

AND, WHEREAS, Said Deed of Trust further provided, that for the sake of convenience in making said conveyances, the said Trustees should have power to act by attorney, duly nominated and appointed by them jointly, by letter of attorney, which should be duly acknowledged and recorded in each and all the counties in which said lands, or any part thereof, are situated, and that all deeds made in their names by such attorney should have the same force and effect as if made by them in person.

AND, WHEREAS, On the 21st day of April, 1883, said Trustees, D. O. Mills and Gerrit L. Lansing, acting under the power so vested in them, did nominate, constitute and appoint, by letter of attorney, duly acknowledged and recorded as aforesaid, Jerome Madden, of the City and County of San Francisco, and State of California, their true and lawful attorney, in their names, place and stead, to make, execute and deliver all conveyances required of them, as aforesaid.

AND, WHEREAS, The said Railroad Company has sold the lands hereinafter described, pursuant to the fore-

going conditions, to of the
County of and State of California,
for the sum of
Dollars, which sum has been by h fully
paid to the said D. O. Mills and Gerrit L. Lansing,
Trustees as aforesaid.

Now, THEREFORE, In consideration of the premises,
and the said sum of
Dollars, the receipt whereof is hereby acknowledged,
the said Southern Pacific Railroad Company, and the
said D. O. Mills and Gerritt L. Lansing, Trustees as
aforesaid, do remise, release and quitclaim to the said
..... and to
heirs and assigns, all the right, title and interest
which they now have or may hereafter acquire from
the Government of the United States, of, in and to the
following described tract of land situate, lying
and being in the County of and State of
California, to wit :

of Section No. in Township.
of Range base and meridian,
containing acres,
according to the United States surveys, together with
all the privileges and appurtenances thereunto apper-
taining and belonging; excepting and reserving, how-

ever, for railroad purposes, a strip of land one hundred feet wide, lying equally on each side of the track of the railroad of said company, or any branch railroad now or hereafter constructed on said lands, and the right to use all water needed for the operating and repairing of said railroad; and subject also to the reservation and condition that the said purchaser..... heirs and assigns, shall erect and maintain good and sufficient fences on both sides of said strip or strips of land; and also reserving all claim of the United States to the same as mineral land.

To HAVE AND TO HOLD, the aforesaid premises, to the said

..... heirs and assigns, to and their use and behoof forever.

IN TESTIMONY WHEREOF, The said Southern Pacific Railroad Company has caused these presents to be signed by its President and Secretary, and sealed with its corporate seal; and the said D. O. Mills and Gerrit L. Lansing, Trustees, by their said attorney, Jerome Madden, have subscribed their names and affixed their seals, this day of A. D., 18.....

.....
Pres. S. P. R. R. Co.

() See. S. P. R. R. Co.

..... (Seal) } Trustees.
..... (Seal) }

By

Their joint Attorney-in-fact.

STATE OF CALIFORNIA,
City and County of San Francisco, } ss.

On this..... day of....., in the year
one thousand eight hundred and eighty....., before
me, a Notary Public in
and for said City and County of San Francisco, State
of California, personally appeared.....,
known to me to be the President, and.....,
known to me to be the Secretary, of the corporation
that executed the within instrument, and each of
them acknowledged to me that such corporation
executed the same; also, on this, the day afore-
said, before me, the Notary Public aforesaid, person-
ally appeared Jerome Madden, known to me to be the
person whose name is subscribed to the within instru-
ment, as the Attorney-in-fact of D. O. Mills and
Gerrit L. Lansing, and acknowledged to me that he
subscribed the names of the said D. O. Mills and
Gerrit L. Lansing thereto as principals, and his own
name as Attorney-in-fact.

IN WITNESS WHEREOF, I have hereunto set my hand
and affixed my official seal, at my office, in the City
and County of San Francisco, State of California, on
the day and year above written.

()

Notary Public in and for the City and County
of San Francisco, and State of California.

[Endorsed]: Quitclaim Deed No. Southern
Pacific Railroad Co., D. O. Mills and Gerrit L. Lan-
sing, Trustees, to. Quitclaim Deed. Dated
..... 18..... Received June 5, 1893. Wm.
M. Van Dyke, Clerk. Filed Jun. 12, 1893. Wm. M.
Van Dyke, Clerk.

At a stated term, to-wit, the January term, A. D. 1893, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, held at the court-room in the City of Los Angeles, on Monday, the seventeenth day of July, in the year of our Lord one thousand eight hundred and ninety-three:

Present: The Honorable ERSKINE M. ROSS, District Judge.

THE UNITED STATES OF AMERICA,
Complainants,
vs.
THE SOUTHERN PACIFIC RAILROAD
Co., et al.,
Defendants. } No. 184.

Upon motion of counsel for complainants, it is ordered that the complainants may withdraw without prejudice to any new suit and without prejudice to other relief sought, all claims for damages for timber trespass and for an accounting for the value of wood and timber claimed to have been cut and removed by defendants from the lands described in the bill.

I, WM. M. VAN DYKE, Clerk of the Circuit Court of the United States, for the Southern District of California, do hereby certify the foregoing to be a full, true and correct copy of an original order, made and entered by said Court July 17th, 1893, in the cause entitled, The United States of America, Complainants, vs. The Southern Pacific Railroad Company, et al.,

Defendants, No. 184, and now remaining of record therein.

Attest my hand and the seal of said Circuit (Seal) Court, this 19th day of July, A. D. 1894.

WM. M. VAN DYKE,
Clerk.

[Endorsed]: No. 184. U. S. Circuit Court, Ninth Circuit, Southern District of California. The United States of America, vs. The Southern Pacific Railroad Company, et al. Certified Copy of Order Allowing Withdrawal of Claim for Damages. Filed Jul. 19, 1894. Wm. M. Van Dyke, Clerk.

At a stated term, to-wit, the August term, A. D. 1893, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, held at the courtroom in the City of Los Angeles, on Monday, the sixteenth day of October, in the year of our Lord one thousand eight hundred and ninety-three:

Present: The Honorable ERSKINE M. ROSS, District Judge.

THE UNITED STATES OF AMERICA, Complainants, vs. THE SOUTHERN PACIFIC RAILROAD COMPANY, ET AL.,	}	No. 184.
Defendants.		

On motion of Daniel L. Russell, Esq., it is ordered that S. M. White, Esq., and Daniel L. Russell, Esq., be and they hereby are substituted for S. M. White, Esq.,

and James S. Robinson, Esq., as attorneys for the estate of Miguel Leonis, deceased.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States, for the Southern District of California, do hereby certify the foregoing to be a full, true and correct copy of an original order, made and entered by said Court, October 16th, 1893, in the cause entitled, The United States of America, Complainants, vs. The Southern Pacific Railroad Company, et al., Defendants, No. 184, and now remaining of record therein.

Attest my hand and the seal of said Circuit
(Seal) Court, this 19th day of July, A. D. 1894.

WM. M. VAN DYKE,
Clerk.

[Endorsed]: No. 184. U. S. Circuit Court, Ninth Circuit, Southern District of California. The United States of America, vs. The Southern Pacific Railroad Company, et al. Certified Copy Order Allowing Substitution of Attorneys. Filed Jul. 19, 1894. Wm. M. Van Dyke, Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
Southern District of California.*

UNITED STATES OF AMERICA, vs. THE SOUTHERN PACIFIC RAILROAD COMPANY, ET ALS.,	Plaintiff, Defendants.	}
	No. 184.	

Amended Answer to Amended Bill, No. 184.

Comes now John Robarts and George L. Mesnager, executors of the last will and testament of Miguel Leonis, deceased, leave of the Court being first had and obtained, files this, their amended answer to the said amended bill of complaint, No. 184; and now here answering for themselves alone as the executors of said estate, and not for the other defendants herein, aver as follows:

I.

That the said Miguel Leonis, in his lifetime, made and published his last will and testament, whereby he appointed I. W. Hellman, John Robarts and George L. Mesnager, defendants herein, executors thereof; that on the 20th day of September, A. D. 1889, at the County of Los Angeles, in the State of California, the said Miguel Leonis died; that on the 10th day of October, A. D. 1889, at the City of Los Angeles, said will was proved and admitted to probate in the Superior Court of the County of Los Angeles, in the State of California. That thereupon, on the 10th day of October,

A. D. 1889, letters testamentary were issued to the respondents, John Robarts, George L. Mesnager and I. W. Hellman, by the Superior Court of the said County of Los Angeles; that thereupon the said respondents, together with I. W. Hellman, duly qualified and entered upon the discharge of their duties as executors of the estate of said Miguel Leonis, and that said letter's testamentary have not been revoked.

That, thereafterwards, I. W. Hellman resigned his trust, as such executor, which resignation was duly accepted by the Superior Court of the County of Los Angeles, on the 5th day of May, 1890, leaving John Robarts and George L. Mesnager as the remaining executors of said estate, who ever since have been and now are the duly qualified and acting executors of the estate of the said Miguel Leonis.

II.

And the said respondents admit that the lands hereinafter described were acquired by the United States of America from Mexico, in or about the year 1846, and the title to said lands was confirmed to the United States by the Treaty of Guadalupe Hidalgo, in the year 1848. The said respondents deny that such lands, or any thereof, ever since such acquisition or confirmation of title thereof, have been or at the time of, or at any time since the filing of the bill of complaint in this suit, were or have been, or are now, owned by the United States, by title in fee simple, or otherwise. They deny that the complainant during said times, or at the times, or at any times, or at any time since the filing of the bill of complaint in this suit, was or has

been, or that it now is, in the possession thereof; and allege on the contrary that the said hereinafter described lands, long before the filing of said bill had been granted by the complainant to the respondent, the Southern Pacific Railroad Company, and were in the actual possession of the said Miguel Leonis during his lifetime, and ever since his death as aforesated, his said executors have been in the absolute and exclusive possession of the said land and premises.

And further answering, say: That the said M. Leonis, during his lifetime and since his said death, his executors have paid all taxes, State and County, that have been assessed and levied upon the said lands.

III.

And for a further, distinct and separate answer to the said amended bill, respondents allege:

That by the Act of Congress of the United States of America, approved July 27th, A. D. 1866, entitled, "An Act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast;" Congress incorporated the Atlantic and Pacific Railroad Company, and granted to said company in aid of the construction of such railroad, a large amount of land in the State of California and other States and Territories, and to the whole of which act the defendants refer and make the same a part of this, their amended answer. (See U. S. Statute, Vol. 15, page 292.)

Section 3 of said Act provides as follows:

"That there be and hereby is granted to the Atlantic and Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific Coast, and to secure the safe and speedy transportation of mails, troops, munitions of war and public stores, over the route of said line of railway and its branches, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile on each side of said railroad line, as said Company may adopt, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever and wherever it passes through any State, and when over on the line thereof, the United States have full title, not reserved, sold, granted or otherwise appropriated, and free from pre-emption and other claims or rights at the time the line of said railroad is designated by a plat thereof, filed in the office of the Commissioner of the General Land Office, and whenever, prior to said time, any of said sections, or part of sections, shall have been granted, sold, reserved, occupied by homestead settlers or pre-emptors, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not including the reserve numbers; provided, that if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have been heretofore granted by

the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this Act."

And Section 18 of said Act provides as follows:

"Section 18. That the Southern Pacific Railroad, a company incorporated under the laws of the State of California, is hereby authorized to connect with the said Atlantic and Pacific Railroad, formed under this act, at such point near the boundary line of the State of California as they shall deem most suitable for a railroad line to San Francisco, and shall have a uniform gauge and rate of freight, or fare with said road, and in consideration thereof to aid in its construction shall have similar grants of land, subject to all the conditions and limitations herein provided, and shall be required to construct its road on the like regulation as to time and manner with the Atlantic and Pacific Railroad herein provided for."

IV.

These respondents, as such executors, would further show to the Court, that by Section 23 of an Act of Congress, approved March 3rd, 1871, (U. S. Statutes, Vol. 16, page 573), entitled an act to incorporate the Texas and Pacific Railroad Company, and to aid in the construction of said road, and for other purposes, it was provided as follows:

"That for the purpose of connecting the Texas and Pacific Railroad with the City of San Francisco, the Southern Pacific Railroad Company is hereby authorized (subject to the laws of California) to construct a

line of railroad from a point at or near Tehachapi Pass by way of Los Angeles, to the Texas and Pacific Railroad, at or near the Colorado River, with the same rights, grants and privileges, and subject to the same limitations, restrictions and conditions, as were granted to the said Southern Pacific Railroad Company of California, by the Act of July 27th, A. D. 1866; provided, however, that this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company, or any other railroad company."

V.

These respondents further aver that the Southern Pacific Railroad Company, in pursuance of the Acts of Congress herein set forth, and all acts amendatory, supplementary, or in addition thereto, bearing upon the same subject, as far as duties are imposed, privileges extended, or obligations required of the said company, were each and all duly and legally accepted by the said Southern Pacific Railroad Company, and that all acts, obligations, requirements and duties, required by said Acts of Congress to be done and performed by the said Southern Pacific Railroad Company, for the construction and completion (subject to the laws of the State of California) of a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas and Pacific Railroad, at or near the Colorado River, were duly and legally performed, in each and all and every respect or manner whatsoever as is required by law, and that said railroad has been duly and legally accepted by the United States of America, by reason

whereof and by virtue of said performance and acceptance, the said Southern Pacific Railroad Company were and are legally entitled to the lands set forth and described in the amended bill of complaint.

These respondents further answering said amended bill, aver: That in pursuance of the several Acts of Congress hereinbefore set forth, and all other Acts of Congress bearing on the same subject matter, and by virtue thereof, the United States of America, duly and legally conveyed to the "The Southern Pacific Railroad Company" by letters patent, on or about the 9th day of January, 1885, the following-described lands, to-wit:

In the County of Los Angeles, State of California, to-wit: The southwest quarter (S. W. $\frac{1}{4}$), south half of southeast quarter (S. $\frac{1}{2}$ of S. E. $\frac{1}{4}$) of Section Twenty-nine (29); all of Thirty-one (31), in Township Six (6) North, of Range Twelve (12) West; all of fractional Seven (7), northwest quarter (N. W. $\frac{1}{4}$), west half of southwest quarter (W. $\frac{1}{2}$ of S. W. $\frac{1}{4}$), east half of southeast quarter (E. $\frac{1}{2}$ of S. E. $\frac{1}{4}$) of Section Seventeen, south half of Fifteen; all of Twenty-one (21), Twenty-three (23) and Twenty-five (25) in Township Six (6) North of Range Thirteen (13) West; all of One (1), northeast quarter of eleven (11); north half of Section Thirteen in Township six, North of Range Fourteen (14), west of San Bernardino Base and Meridian; containing five thousand two hundred and 8'-100 acres, according to the United States survey.

VI.

These respondents further aver, that their testator, the said Miguel Leonis, did, in his lifetime, on or

about the 24th day of March, A. D. 1885, in good faith and for a valuable consideration, to-wit: the sum of thirteen thousand and two dollars and thirteen cents (\$13,002.13), buy and purchase from the said the Southern Pacific Railroad Company, one of the defendants herein, all the lands and premises described in the preceding paragraph; that their testator purchased the same in good faith, and for a valuable consideration, believing, and still believing, that at the time of said purchase of said lands they were owned by absolute title in fee simple by said Southern Pacific Railroad Company, and its said grantees; and received from the said the Southern Pacific Railroad Company, a deed of conveyance (in print and writing), a copy of which said conveyance is in words and figures following, to-wit:

DEED No. 2931.

To ALL TO WHOM THESE PRESENTS SHALL COME:

The Southern Pacific Railroad Company, a corporation duly incorporated and organized under the laws of the State of California, and D. O. Mills and Gerrit L. Lansing, Trustees, of all the lands of the said Southern Pacific Railroad Company, lying in the State of California which remained unsold on the first day of April, A. D. 1875, Send Greeting:

WHEREAS, on the 1st day of April, A. D. 1875, the said Southern Pacific Railroad Company conveyed all its lands lying in the State of California then unsold, of which the lands hereinafter described were and are a part, to D. O. Mills and Lloyd Tevis, to hold in trust as security for the payment of forty-eight

thousand bonds, forty-four thousand thereof for the sum of one thousand dollars each, and four thousand thereof for the sum of five hundred dollars each, issued and to be issued by said Southern Pacific Railroad Company in seven series, to be designated by the letters of the alphabet, commencing with the letter A and following by the succeeding letters in regular order to, and including the letter G. Series A to consist of thirteen thousand bonds for one thousand dollars each, numbered from one to thirteen thousand, both inclusive; and four thousand bonds for five hundred dollars each, numbered from thirteen thousand and one to seventeen thousand, both inclusive; Series B to F, both inclusive, to consist of five thousand bonds each, for one thousand dollars each, numbered from seventeen thousand and one to forty-two thousand, both inclusive; Series G to consist of six thousand bonds, of one thousand dollars each, numbered from forty-two thousand and one to forty-eight thousand, both inclusive; all of said bonds payable thirty years after date, with interest at the rate of six per centum per annum, payable semi-annually; said Series A to bear date April first, eighteen hundred and seventy-five, and the said several succeeding series to bear such dates respectively as the Board of Directors of said Southern Pacific Railroad Company may direct; all of said bonds aggregating the sum of forty-six millions of dollars; and,

WHEREAS, said Deed of Trust, among other matters, provided that the said Southern Pacific Railroad Company should have the sole and exclusive control and

management of said lands, with full power to make sales of the same, upon such terms and conditions as might, from time to time, be agreed upon between the said Railroad Company and the said Trustees; and that when such sales had been made, and the purchase money fully paid, the said company and the said Trustees should unite in a conveyance in fee simple of the lands so sold to the purchaser or purchasers thereof, which conveyance should absolutely and forever release the lands so conveyed from any and all lien or incumbrance for, or on account of said bonds, or any other debt or obligation of the said railroad company; and,

WHEREAS, On the 24th day of March, 1883, Lloyd Tevis, one of the Trustees, did resign his trust under said conveyance of the first of April, 1875; and

WHEREAS, On the 3d day of April, 1883, the said D. O. Mills, the remaining Trustee, under said conveyance, did, pursuant to the terms of his trust, nominate Gerrit L. Lansing, of the City of San Francisco, and State of California, to fill the vacancy caused by the resignation of said Lloyd Tevis; and,

WHEREAS, On the 17th day of April, 1883, the Board of Directors of the said Southern Pacific Railroad Company, pursuant to the terms of said trust, did ratify and approve said nomination, and did appoint said Gerrit L. Lansing to fill said vacancy; and,

WHEREAS, On the 18th day of April, 1883, the said Gerrit L. Lansing did formally accept the position of Trustee under Deed of Trust; and,

WHEREAS, Said Deed of Trust further provided that for the sake of convenience in making said convey-

ances, the said Trustees should have power to act by attorney, duly nominated and appointed by them, jointly, by letter of attorney, which should be duly acknowledged and recorded in each and all the counties in which said lands, or any part thereof, are situated; and that all deeds made in their names by such attorney should have the same force and effect as if made by them in person; and,

WHEREAS, on the 21st day of April, 1883, said trustees, D. O. Mills and Gerrit L. Lansing, acting under the power so vested in them, did nominate, constitute and appoint by letters of attorney, duly acknowledged and recorded as aforesaid, Jerome Madden, of the City and County of San Francisco, and State of California, their true and lawful attorney in their names, place and stead, to make, execute and deliver all conveyances required by them as aforesaid; and

WHEREAS, the said railroad company has sold the lands hereinafter described, pursuant to the foregoing conditions, to Miguel Leonis, of the City of Los Angeles, in the State of California, for the sum of thirteen thousand and two and 13-100 dollars (\$13,002.13), which sum has been by him fully paid to the said D. O. Mills and Gerrit L. Lansing, trustees as aforesaid:

Now, THEREFORE, in consideration of the premises and the said sum of thirteen thousand and two and 13-100 dollars (\$13,002.13), the receipt whereof is hereby acknowledged, the said Southern Pacific Railroad Company, and the said D. O. Mills and Gerrit L. Lansing, trustees as aforesaid, do grant, bargain, sell

and convey to the said Miguel Leonis, and to his heirs and assigns, the following described tracts of land, situate, lying and being in the County of Los Angeles, and State of California, to-wit:

The southwest quarter (S. W. $\frac{1}{4}$), south half of southeast quarter (S. $\frac{1}{2}$ of S. E. $\frac{1}{4}$) of Section Twenty-nine (29); all of Thirty-one (31), in Township Six (6) North of Range Twelve (12) West; all of fractional Seven (7), northwest quarter (N. W. $\frac{1}{4}$), west half of southwest quarter (W. $\frac{1}{2}$ of S. W. $\frac{1}{4}$), east half of southeast quarter (E. $\frac{1}{2}$ of S. E. $\frac{1}{4}$) of Seventeen (17); south half of Fifteen; all of Twenty-one (21), Twenty-three (23) and Twenty-five (25), in Township Six (6) North of Range Thirteen West; all of One (1), northeast quarter (N. E. $\frac{1}{4}$) of Eleven (11), and north half (N. $\frac{1}{2}$) of Section Thirteen (13), in Township Six (6) North of Range Fourteen (14) West, San Bernardino Base and Meridian, containing fifty-two hundred and 83-100 (5,200.83) acres according to the United States surveys, together with all the privileges and appurte- nances thereunto appertaining and belonging, reserving all claim of the United States to the same as mineral land.

TO HAVE AND TO HOLD, the aforesaid premises, to the said Miguel Leonis, his heirs and assigns, to his and their use and behoof forever.

IN TESTIMONY WHEREOF, the said Southern Pacific Railroad Company has caused these presents to be signed by its Vice-President and Secretary, and sealed with its corporate seal; and the said D. O. Mills and Gerrit L. Lansing, Trustees, by their attorney, Jerome

Madden, have subscribed their names and affixed their seals, this twenty-fourth day of March, A. D. 1885.

(Seal)

CHAS. F. CROCKER,

Vice-Pres. S. P. R. R. Co.

J. L. WILLCUTT,

Sec. S. P. R. R. Co.

D. O. MILLS, (Seal)

GERRIT L. LANSING, (Seal)

Trustees.

By JEROME MADDEN,

Their joint Attorney-in-Fact.

STATE OF CALIFORNIA,

} ss.

City and County of San Francisco. }

On this twenty-fourth (24) day of March, in the year one thousand eight hundred and eighty-five (1885) before me, Charles J. Torbert, a Notary Public in and for said City and County of San Francisco, State of California, personally appeared Charles F. Crocker, known to me to be the Vice President, and J. L. Willcutt, known to me to be the Secretary, of the corporation that executed the within instrument; and each of them acknowledged to me that such corporation executed the same; also, on this the day aforesaid, before me, the Notary Public aforesaid, personally appeared Jerome Madden, known to me to be the person whose name is subscribed to the within instrument, as the attorney-in-fact of D. O. Mills and Gerrit L. Lansing, and acknowledged to me that he subscribed the names of the said D. O. Mills and Gerrit L. Lansing thereto as principals, and his own name as attorney-in-fact.

IN WITNESS WHEREOF, I have hereunto set my hand,
affixed my official seal, at my office, in the City and
County of San Francisco, State of California, on the
day and year above written.

(Seal)

CHARLES J. TORBERT,

Notary Public in and for the City and County
of San Francisco, and State of California.

VII.

These respondents admit that the amount in controversy in this suit exceeds the sum or value of \$5000.00, exclusive of interest and costs.

VIII.

These respondents admit that the lands described in this, their amended answer, are to a considerable extent naturally timbered or wooded land, and valuable for the timber and wood thereon. While admitting that they claim to own said lands, these respondents deny that they or their agents have ever unlawfully entered on said lands or unlawfully chopped down any timber or trees thereon, and deny that said lands, timber or trees, or any thereof, were at any time since the taking effect of the grant to the defendant Southern Pacific Railroad Company, above referred to, the property of the complainant in this suit. These respondents admit that their testator in his lifetime, and the agents of his estates since his death, have at various and divers times carried away timber and trees from said lands, and applied the same to their own use, and are now removing from said land wood cut thereon, and are in-

tending to and unless enjoined therefrom, will chop down other trees on said land, but they deny that any such acts were, are or will be in anywise unlawful or have resulted or will or could result in any injury to the complainant.

IX.

Replying to paragraph VIII of the bill of complaint, these respondents deny the allegations of said paragraph and each of said allegations; and aver that their claim to the lands in suit herein is legal and valid and founded upon express grant thereof, to the said Southern Pacific Railroad Company from the complainant, and as to the lands described in this amended answer they ask leave and refer to and show a patent or patents thereof, to the said Southern Pacific Railroad Company (the grantor of these respondents) from the Government of the United States, legally issued and duly authenticated, as required and authorized by law.

X.

These respondents admit that the Southern Pacific Railroad Company, which is one of the respondents herein, claims to have, and these respondents aver, that patents were issued by the United States to the said Southern Pacific Railroad Company, in due form of law, purporting to convey, and conveying to said company, among others, the lands described herein.

These respondents aver that said patents were real and not pretended, and were duly recorded in the Recorder's division in the General Land Office, before they were delivered to said company, and still remain so of record, and since the delivery thereof to the said

Southern Pacific Railroad Company (the grantor of these respondents), the same have been recorded in the County of Los Angeles, in the State of California.

XI.

These respondents deny that the lands thus patented are unknown to the complainant, and deny that the patents therefor were issued illegally, or without authority of law, or are illegal or void. On the contrary, these respondents allege that said patents are in all respects legal and valid; and they ask leave here to refer to the same, and to present and file as evidence in this suit, duly certified copies thereof, and of said deed of conveyance from the said Southern Pacific Railroad Company to the said Miguel Leonis, and ask that the same be taken, held and considered by the Court as muniments in the title of these respondents.

XII.

These respondents deny all, and all manner of unlawful combination with which they are by the said bill charged, without this, that any other matter, cause or thing in the complainant's said bill of complaint contained, material or necessary for these respondents to make answer unto, but not herein and hereby well and specifically answered, confessed, traversed, avoided or denied, is true to the knowledge or belief of these respondents; all of which matters and things these respondents are ready and willing to aver, maintain and prove as this Honorable Court shall direct; and pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

XIII.

Further answering herein, these respondents deny generally and specifically each and every allegation in the said amended bill of complaint, except as hereinbefore specially admitted.

STEPHEN M. WHITE & DANIEL L. RUSSELL,

Solicitors for the Estate of Miguel Leonis,
John Robarts and George L. Mesnager,
Executors of said Estate.

Copy of the foregoing answer received this 29 day of Nov., 1893, and consent given to file the same, but to be without prejudice to testimony taken and other proceedings had in said cause, and it is further agreed that plaintiff's replication heretofore filed shall stand to this amended answer.

JOSEPH H. CALL,

Spl. Asst. U. S. Atty.

STEPHEN M. WHITE & DANIEL L. RUSSELL,

Solicitors for Exrs. of M. Leonis.

[Endorsed]: No. 184. In the Circuit Court of the United States, Ninth Circuit, Southern District of California. United States of America, Plaintiff, vs. Southern Pacific R. R. Co, et als, Defendant. Amended Answer of Executors of the Estate of Miguel Leonis. Filed Dec. 6, 1893. Wm. M. Van Dyke, Clerk. Received copy of the within Amended Answer this day of Nov. 1893. Stephen M.

vs. THE UNITED STATES.

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White, Daniel L. Russell, Attorneys for Executors,
Rooms 1, 2 and 3 Wilcox Block, 138½ N. Spring St.
Los Angeles, Cal.

At a stated term, to-wit, the August term, A. D. 1893,
of the Circuit Court of the United States of America,
of the Ninth Judicial Circuit, in and for the South-
ern District of California, held at the courtroom in
the City of Los Angeles, on Thursday, the twenty-
first day of December, in the year of our Lord one
thousand eight hundred and ninety-three:

Present: The Honorable ERSKINE M. Ross, Dis-
trict Judge.

THE UNITED STATES OF AMERICA,

Complainants, }
vs. } No. 184.

THE SOUTHERN PACIFIC RAILROAD }

COMPANY, et al., Defendants.

On motion of D. L. Russell, Esq., of counsel for John Robarts and George L. Mesnager, executors of the last will and testament of the estate of Miguel Leonis, deceased, one of the defendants in said cause, and good cause appearing therefor, it is ordered that Daniel L. Russell, Esq., and Horace Bell, Esq., be and they hereby are substituted as solicitors of record in said cause for said defendant in the place and stead of Stephen M. White, Esq., and Daniel L. Russell, Esq.,

and that they be considered as the solicitors henceforth in said cause for said defendant.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States, for the Southern District of California, do hereby certify the foregoing to be a full, true and correct copy of an original order made and entered by said Court December 21st, 1893, in the cause entitled The United States of America, Complainants, vs. The Southern Pacific Railroad Company et al., Defendants, No. 184, and now remaining of record therein.

Attest my hand and the seal of said Circuit Court, this 19th day of July, A. D. 1894.

(Seal)

WM. M. VAN DYKE,
Clerk.

[Endorsed]: No. 184. U. S. Circuit Court, Ninth Circuit, Southern District of California. The United States of America vs. The Southern Pacific Railroad Company, et al. Certified Copy of Order Allowing Substitution of Attorneys. Filed Jul. 19, 1894. Wm. M. Van Dyke, Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
Southern District of California.*

No. 184.

THE UNITED STATES OF AMERICA,
Complainant,
vs.

THE SOUTHERN PACIFIC RAILROAD
COMPANY, and D. O. Mills and
Garrit L. Lansing, Trustees, The
City Brick Company, Atlantic and
Pacific Fibre Importing and Man-
ufacturing Company, Limited;
Julius Abrahamson, Hugo Abra-
hamson, Mrs. Jesus Ord de An-
drade, Mrs. Thomas Allison, Mrs.
Mary Backman, Mrs. Matilda L.
Barber, Henry A. Barelay, E. T.
Barber, Thomas N. Beek, A. M.
Benham, Jesse Martin Blanchard,
E. H. Blood, Ira H. Bradshaw, B.
B. Briggs, Philomela T. Bunell,
Frederick H. Busby, A. W. Butler,
H. A. Bond, William H. Carlson,
V. E. Carson, B. F. Carter,
Harry Chandler, Fred. Chan-
tier, Walter S. Chaffee, J.
N. Chapman, F. O. Christensen,
Mrs. L. C. Chormicle, Byron O.
Clark, George Claussen, Clarence
T. Cleve, Nicholas Cochems, Na-
than Cole, Jr., Peter Cook, I. D.
Cory, Seaton T. Cull, Stefano

Cuneo, J. A. Dahl, Andrew J. Darling, Thomas A. Delano, Richard Dillon, John Ditter, David Dolbeen, John F. Duehren, James F. Dunsmoor, Edward G. Durant, Robert Dunn, Henry Elms, Fairmont Land and Water Company, Farming and Fruit Land Company, George W. Fentrees, S. W. Ferguson, William Ferguson, William Freeman, Joseph W. Furnival, J. Garber, F. C. Garbutt, J. Drew Gay, F. A. Geier, Ambrose F. George, Will D. Gould, Mrs. Mary L. Gould, Thomas E. Gould, James Greton, W. F. Grosser, D. J. Haines, Herman Haines, James M. Hait, Simeon Hamberg, Jacob Harpe, Alice A. Hall, Calvin Hartwell, William T. Hamilton, William T. Hamilton, James Hamilton, Peter Hamilton, John C. Haskell, John C. Hay, Mary Jackson Hall, Julius Heyman, J. M. Hill, John D. Hoffman, August Hoelling, J. F. Holbrook, W. R. Hughes, George A. Hunter, J. F. Houghton, E. J. Ismert, W. W. Jenkins, Thomas J. Johannsen, M. D. Johnson, John J. Jones, A. S. Joseph, John Kenealey, Frederick Kenworthy, Richard Kichline, Joseph Kurtz, Charles Kut-

schmar, Mrs. Ammoretta, J. Lanterman, T. B. Lawhead, L. B. Lawson, Lawson M. Fetra, Stephen L. Leighton, John Robarts and George L. Mesnager, Executors of the last Will and Testament of Miguel Leonis, deceased, George Loomis, George Loomis, Marion C. Loop, Pablo Lopez, Daniel Luce, G. W. Mack, John B. Martin, Cora L. Mathison, Ezra May, Angus S. McDonald, A. M. Melrose, Mrs. Flossy Melrose, W. E. McVay, Thomas Menzies, J. G. Miller, John Million, Mrs. Mamie O. Million, H. H. Mize, Thomas F. Mitchell, W. H. Mosely, L. E. Mosher, Joseph Mullally, Andrew Myers, D. C. Newcomb, Albert E. Nettleton, North Pasadena Land and Water Company, James O'Reilly, George L. Ott, Pacific Coast Oil Company, J. H. Painter, M. D. Painter, Mrs. Annie Palen, J. R. Pallett, W. A. Pallett, T. A. Pallett, C. O. Parsons, F. W. Pattee, James Peirano, John J. Peckham, Ramon Perea, Daniel Phelan, Edward E. Perley, McH. Pierce, William Pisch, R. M. Pogson, A. W. Potts, Lafayette S. Porter, A. J. Praster, F. H. Prescott, Lewis H. Price,

Charles Raggis, W. B. Ralphs, James B. Randol, C. P. Randolph, F. M. Randolph, Francisco Real, George H. Reed, John Rea, Otto Rinderknecht, Felipe Rivera, James Robertson, George D. Rowan, S. D. Savage, Jacob Scherer, George W. Seifert, Luciano Sequois, Henry C. Shearman, Henrietta Shirpser, Rebecca Jetta Shirpser, David Shirpser, Max Shirpser, Gianbatista Sinaco, J. S. Slauson, J. Wallen Smith, Mrs. Maggie Smith, E. Sommer, W. A. Spence, H. G. Stevenson, H. J. Stevenson, M. W. Stimson, Robert Strathearn, R. P. Strathearn, Eleanor Sussman, D. M. Sutherland, John Sweeney, W. H. Teggart, James P. Taylor, Mary G. Tongier, James R. Townsend, Mrs. C. L. True, L. Tunison, J. S. Turner, George S. Umpleby, F. Veyset, George Vilas, Alden R. Vining, Daniel A. Wagner, S. A. Waldron, W. W. Wallace, C. H. Watts, Mrs. Julia J. Wheeler, A. C. Whitaere, M. L. Wicks, Moye Wicks, Mrs. Jennie L. Wicks, Mary C. Williams, C. N. Wilson, Robert N. C. Wilson, J. Youngblood and Jackson Alpheus Graves,

Defendants.

The complainants filed their bill of complaint herein on the 17th day of May, 1890, against The Southern Pacific Railroad Company and D. O. Mills and Garrit L. Lansing, Trustees, and The City Brick Company, which is hereto annexed.

A writ of subpoena to appear and answer the said bill of complaint was thereupon, on said 17th day of May, 1890, issued, returnable on the 7th day of July, 1890, which is hereto annexed.

The defendant, The Southern Pacific Railroad Company, appeared herein on the 5th day of June, 1890, by Joseph D. Redding, Esq., its solicitor.

An alias writ of subpoena, requiring the defendant The City Brick Company, to appear and answer said bill of complaint, was thereafter, on the 14th day of June, 1890, issued, returnable on the 7th day of July, 1890, and is hereto annexed.

On the 16th day of June, 1890, the Court made and entered an order herein requiring D. O. Mills and Garrit L. Lansing, Trustees, to appear, plead, answer or demur to the bill of complaint herein, by the 4th day of August, 1890, a copy of which order is hereto annexed.

The defendants, D. O. Mills and Garrit L. Lansing, Trustees, and The City Brick Company, appeared herein on the 27th day of June, 1890, by Joseph D. Redding, Esq., their solicitor.

The defendant, The City Brick Company appeared herein on the 7th day of July, 1890, by Messrs. Chapman & Hendrick, its solicitors.

The plea of defendants, The Southern Pacific Railroad Company, and D. O. Mills and Gerrit L. Lansing,

Trustees, to the bill of complaint, was filed herein on the 4th day of August, 1890, and is hereto annexed.

Said plea was thereafter, on motion of complainants, set down for hearing and argument before the Court, and was, on the 13th day of January, 1891, submitted to the Court for its consideration and decision upon briefs to be filed by counsel for the respective parties.

On the 18th day of February, 1891, a stipulation was filed herein, signed by the solicitors for the respective parties, withdrawing said plea, and allowing defendants further time to plead, demur or answer, which said stipulation is hereto annexed.

On the 6th day of March, 1891, complainants' amendment to its bill of complaint was filed herein, and is hereto annexed.

On the 1st day of May, 1891, the answer of defendants to complainants' bill of complaint, filed on the 17th day of May, 1890, and the amendment to said bill, filed on the 6th day of March, 1891, was filed herein, and is hereto annexed.

On the 20th day of July, 1891, complainants' replication to defendants' answer was filed herein, and is hereto annexed.

On the 20th day of August, 1891, an order was filed and entered herein, allowing the withdrawal of complainants' replication, and granting time within which complainants might file an amended bill herein, which order is hereto annexed.

The complainants filed their amended bill of complaint herein on the 25th day of September, 1891, against The Southern Pacific Railroad Company, and

D. O. Mills and Garrit L. Lansing, Trustees, The City Brick Company, Atlantic and Pacific Fibre Importing and Manufacturing Company, Limited, Julius Abrahamson, Hugo Abrahamson, Mrs. Jesus Ord de Andrade, Mrs. Thomas Allison, Mrs. Mary Backman, Mrs. Matilda L. Barber, Henry A. Barclay, E. T. Barber, Thomas N. Beck, A. M. Benham, Jesse Martin Blanchard, E. H. Blood, Ira H. Bradshaw, B. B. Briggs, Philomela T. Bunell, Frederick H. Busby, A. W. Butler, H. A. Bond, William H. Carlson, William H. Carlson, V. E. Carson, B. F. Carter, Benjamin F. Carter, Harry Chandler, Fred Chandler, Walter S. Chaffee, J. N. Chapman, F. O. Christensen, Mrs. L. C. Chormicle, Byron O. Clark, George Clauseen, Clarence T. Cleve, Nicholas Cochems, Nathan Cole, Jr., Peter Cook, I. D. Cory, Seaton T. Cull, Stefano Cuneo, J. A. Dahl, Andrew J. Darling, Thomas A. Delano, Richard Dillon, John Ditter, David Dolbeen, John F. Duehren, James F. Dunsmoor, Edward J. Durant, Robert Dunn, Henry Elms, Fairmont Land and Water Company, Farming and Fruit Land Company, George W. Fentrees, S. W. Ferguson, William Ferguson, William Freeman, Joseph W. Furnival, J. Garber, F. C. Garbutt, J. Drew Gay, F. A. Geier, Ambrose F. George, Will D. Gould, Mrs. Mary L. Gould, Thomas E. Gould; James Gretton, W. F. Grosser, D. J. Haines, Herman Haines, James M. Hait, Simeon Hamberg, Jacob Harpe, Alice A. Hall, Calvin Hartwell, William T. Hamilton, William T. Hamilton, James Hamilton, Peter Hamilton, John C. Haskell, John C. Hay, Mary Jackson Hall, Julius Heyman, J. M. Hill, John D. Hoffman,

August Hoelling, J. F. Holbrook, W. R. Hughes, George A. Hunter, J. F. Houghton, E. J. Ismert, W. W. Jenkins, Thomas J. Johannsen, M. D. Johnson, John J. Jones, A. S. Joseph, John Kenealey, Frederick Kenworthy, Richard Kichline, Joseph Kurtz, Charles Kutsehmar, Mrs. Ammoretta, J. Lanterman, T. B. Lawhead, L. B. Lawson, Lawson M. La Fetra, Stephen L. Leighton, Miguel Leonis, George Loomis, George Loomis, Marion C. Loop, Pablo Lopez, Daniel Luce, G. W. Mack, John B. Martin, Cora L. Mathiasen, Ezra May, Angus S. McDonald, A. M. Melrose, Mrs. Flossy Melrose, W. E. McVay, Thomas Mensies, J. G. Miller, John Million, Mrs. Mamie O. Million, H. H. Mize, Thomas F. Mitchell, W. H. Mosely, L. E. Mosher, Joseph Mullally, Andrew Myers, D. C. Newcomb, Albert E. Nettleton, North Pasadena Land and Water Company, James O'Reilly, George L. Ott, Pacific Coast Oil Company, J. H. Painter, M. D. Painter, Mrs. Annie Palen, J. R. Pallett, W. A. Pallett, T. A. Pallett, C. O. Parsons, F. W. Pattee, James Peirano, John J. Peckham, Ramon Perea, Daniel Phelan, Edward E. Perley, McH. Pierce, William Piseh, R. M. Pogson, A. W. Potts, Lafayette S. Porter, A. J. Praster, F. H. Prescott, Lewis H. Price, Charles Raggis, W. B. Ralphs, James B. Randol, C. P. Randolph, F. M. Randolph, Francisco Real, George H. Reed, John Rea, Otto Rinderknecht, Felipe Rivera, James Robertson, George D. Rowan, S. D. Savage, Jacob Scherer, George W. Seifert, Luciano Sequoia, Henry C. Shearman, Henrietta Shirpser, Rebecca Jetta Shirpser, David Shirpser, Max Shirpser, Gianbatista Sinaco, J. S. Slauson, J. Wallen Smith, Mrs. Maggie Smith, E. Sommer, W.

A. Spence, H. G. Stevenson, H. J. Stevenson, M. W. Stimson, Robert Strathearn, R. P. Strathearn, Eleanor Sussman, D. M. Sutherland, John Sweeney, W. H. Teggart, James P. Taylor, Mary G. Tongier, James R. Townsend, Mrs. C. L. True, L. Tunison, J. S. Turner, George S. Umpleby, F. Veysset, George Vilas, Alden R. Vining, Daniel A. Wagner, S. A. Waldron, W. W. Wallace, C. H. Watts, Mrs. Julia J. Wheeler, A. C. Whitaere, M. L. Wicks, Moye Wicks, Mrs. Jennie L. Wicks, Mary C. Williams, C. N. Wilson, Robert N. C. Wilson and J. Youngblood, which is hereto annexed.

A writ of subpoena requiring said defendants to appear and answer the said amended bill of complaint was thereafter, on the 28th day of September, 1891, issued, returnable on the 2nd day of November, 1891, which is hereto annexed.

On the 26th day of October, 1891, the Court made and entered an order herein substituting John Robarts and George L. Mesnager, executors of the last will and testament of Miguel Leonis, deceased, in the place and stead of Miguel Leonis, as parties defendant herein, a copy of which order is hereto annexed.

On the 26th day of October, 1891, complainants filed herein their amendment to their amended bill, making said John Robarts and George L. Mesnager, executors of the last will and testament of Miguel Leonis, deceased, parties defendant.

A writ of subpoena requiring John Robarts and George L. Mesnager, executors of the last will and testament of Miguel Leonis, deceased, to appear and answer the said amended bill of complaint, was thereupon, on said 26th day of October, 1891, issued, return-

able on the 7th day of December, 1891, which is hereto annexed.

John Robarts and George L. Mesnager, executors of the last will and testament of Miguel Leonis, deceased, appeared herein on the 2nd day of November, 1891, by Stephen M. White, Esq., and J. S. Robinson, Esq., their solicitors.

The defendants, H. A. Bond, John D. Young, E. Sommer, Mrs. Jesus Ord de Andrade, J. A. Dahl, John Ditter, Mrs. Maggie Smith, Joseph William Furnivall, James Robertson, J. S. Turner, W. A. Spencer, Nathan Cole, Jr., F. Veysset, Otto Rinderknecht, M. D. Painter, Admr. of J. H. Painter, Dec'd, M. D. Painter, Gianbatista Sinaco, appeared herein on the 2nd day of November, 1891, by Joseph D. Redding, Esq., and A. B. Hotchkiss, Esq., their solicitors.

The disclaimer of the defendant, J. S. Slauson, was filed herein on the 2nd day of November, 1891, and is hereto annexed.

The replication of complainants to the answer of J. S. Slauson was filed herein on the 5th day of November, 1891, and is hereto annexed.

An alias writ of subpoena requiring defendants Atlantic and Pacific Fibre Importing and Manufacturing Company, Limited, Julius Abrahamson, Hugo Abrahamson, Mrs. Thomas Allison, Mrs. Mary Backman, Mrs. Matilda L. Barber, E. T. Barber, Thomas N. Beck, A. M. Benham, Jesse Martin Blanchard, E. H. Blood, Ira H. Bradshaw, Philomela T. Bunell, Frederick H. Busby, William H. Carlson, William H. Carlson, V. E. Carlson, B. F. Carter, Benjamin F. Carter, Walter S. Chaffee, J. N. Chapman, F. O. Christensen, George Claussen, Clarencee

T. Cleve, Peter Cook, I. D. Cory, Seaton T. Cull, Andrew J. Darling, Richard Dillon, David Dolbeen, Edward G. Durant, Robert Dunn, Farming and Fruit Land Company, George W. Fentrees, S. W. Ferguson, William Ferguson, William Freeman, Joseph W. Furnival, J. Garber, J. Drew Gay, F. A. Geier, Ambrose F. George, Thomas E. Gould, James Greton, D. J. Haines, Herman Haines, James M. Hait, Simeon Hamberg, Alice A. Hall, William T. Hamilton, William T. Hamilton, James Hamilton, Peter Hamilton, John C. Hay, Mary Jackson Hall, Julius Heyman, J. M. Hill, John D. Hoffman, August Hoelling, George A. Hunter, J. F. Houghton, E. J. Ismert, John J. Jones, A. S. Joseph, Frederick Kenworthy, Charles Kutschmar, T. B. Lawhead, Lawson M. La Fetra, Stephen L. Leighton, George Loomis, George Loomis, Daniel Luce, G. W. Mack, Cora L. Mathiason, Ezra May, J. G. Miller, John Million, Mrs. Mamie O. Million, H. H. Mize, Thomas F. Mitchell, W. H. Moseley, Andrew Myers, D. C. Newcomb, Albert E. Nettleton, George L. Ott, Pacific Coast Oil Company, J. H. Painter, Mrs. Annie Palen, J. R. Pallett, C. O. Parsons, F. W. Pattee, James Peirano, John J. Peckham, Daniel Phelan, Edward E. Perley, William Pisch, R. M. Pogson, Lafayette S. Porter, F. H. Prescott, Lewis H. Price, Charles Raggis, James B. Randol, C. P. Randolph, Francisco Real, George H. Reed, John Rea, S. D. Savage, George W. Siefert, Luciano Sequoia, Henry C. Shearman, Gianbatista Sinaco, J. Wallen Smith, E. Sommer, H. G. Stevenson, Robert Strathearn, R. P. Strathearn, Eleanor Sussman, D. M. Sutherland, W. H. Teggart, James P. Taylor, Mary G. Tongier, Mrs. C. L. True, L. Tunison, George S. Umpleby, George

Vilas, Alden R. Vining, Daniel A. Wagner, W. W. Wallace, C. H. Watts, Mrs. Julia J. Wheeler, A. C. Whitaere, M. L. Wicks, Mrs. Jennie L. Wicks, Mary C. Williams and J. Youngblood, to appear and answer the said amended bill of complaint, was thereafter, on the 30th day of November, 1891, issued, returnable on the 4th day of January, 1892, which is hereto annexed.

On the 7th day of December, 1891, the defendants, Thomas Johannsen, C. N. Wilson, S. A. Waldron, Thomas Menzies, Sr., W. R. Hughes, Nicholas Cochems, Jacob Scherer, T. A. Geier, J. F. Duehren, Julius Abrahamson, Hugo Abrahamson, David Shirpser, Max Shirpser, Henrietta Shirpser, Rebecca Jetta Shirpser, Farming and Fruit Land Company, Carl A. Heesch, Mrs. Jesus Ord de Andrade, Jacob Harpe, Pablo Lopez, Fairmont Land and Water Company, and L. E. Mosher, appeared herein by C. N. Wilson, Esq., their solicitor.

On the 7th day of December, 1891, defendant A. W. Potts appeared herein by A. W. Hutton, Esq., his solicitor.

On the 8th day of December, 1891, defendants Lawson M. La Fetra, Felipe Riviera, Henry Elms, Nicholas Cochems, J. Youngblood, L. B. Lawson, Daniel A. Wagner, W. E. McVay, Harry Chandler, Fred Chandler, John Million, Mamie O. Million, C. P. Randolph, F. M. Randolph, Marion C. Loop, T. A. Pallett, A. J. Praster, William Pisch, Wingert Pisch, Richard Dillon, John Kenealey, J. F. Helbrook, J. R. Pallett, and W. A. Pallett, appeared herein by Joseph D. Redding, Esq., and A. B. Hotchkiss, Esq., their solicitors.

On the 28th day of December, 1891, the Court made and entered an order herein requiring Atlantic and

Pacific Fibre Importing and Manufacturing Company, Limited, Mrs. Thomas Allison, Mrs. Mary Baekman, Mrs. Matilda L. Barber, E. T. Barber, Thomas N. Beck, A. M. Benham, Jesse Martin Blanchard, E. H. Blood, Ira H. Bradshaw, Philomela T. Bunell, Frederick H. Busby, William H. Carlson, William H. Carlson, V. E. Carson, B. F. Carter, Benjamin F. Carter, Walter S. Chaffee, J. N. Chapman, F. O. Christensen, George Claussen, Clarence T. Cleve, Peter Cook, I. D. Cory, Seaton T. Cull, Andrew J. Darling, David Dolbeen, Edward G. Durant, Robert Dunn, George W. Fentrees, S. W. Ferguson, William Ferguson, William Freeman, Joseph W. Furnival, J. Garber, J. Drew Gay, F. A. Geier, Ambrose F. George, Thomas E. Gould, James Greton, D. J. Haines, Herman Haines, James M. Hait, Simeon Hamberg, Alice A. Hall, William T. Hamilton, William T. Hamilton, James Hamilton, Peter Hamilton, John C. Hay, Mary Jackson Hill, Julius Heyman, J. M. Hill, John D. Hoffman, August Hoelling, George A. Hunter, J. F. Houghton, E. J. Ismert, John J. Jones, A. S. Joseph, Frederick Kenworthy, Charles Kutschmar, T. B. Lawhead, Stephen L. Leighton, George Loomis, George Loomis, Daniel Luce, G. W. Mack, Cora L. Mathiasen, Ezra May, J. G. Miller, H. H. Mize, Thomas F. Mitchell, W. H. Mosely, Andrew Myers, D. C. Newcomb, Albert E. Nettleton, George L. Ott, Pacific Coast Oil Company, J. H. Painter, Mrs. Annie Palen, C. O. Parsons, F. W. Pattee, James Peirano, John J. Peckham, Daniel Phelan, Edward E. Perley, R. M. Pogson, Lafayette S. Porter, F. H. Prescott, Lewis H. Price, Charles

Raggis, James B. Randol, Francisco Real, George H. Reed, John Rea, S. D. Savage, George W. Seifert, Luciano Sequois, Henry C. Shearman, Gianbatista Sinaeo, J. Wallen Smith, E. Sommer, H. G. Stevenson, Robert Strathearn, R. P. Strathearn, Elenor Sussman, W. H. Teggart, James P. Taylor, Mary G. Tongier, Mrs. C. L. True, L. Tunison, George S. Umpleby, George Vilas, Alden R. Vining, W. W. Wallace, C. H. Watts, Mrs. Julia J. Wheeler, A. C. Whitaere, and Mary C. Williams, to appear in this Court on the 7th day of March, 1892, and to plead, answer or demur to bill of complaint on the 4th day of April, 1892, a copy of which order is hereto annexed.

On the 4th day of January, 1892, defendants Richard Dillon and John Kenealey appeared herein by Stephen M. White, Esq., their solicitor.

The answer of John Robarts and George L. Mesnager, executors of the last will and testament of Miguel Leonis, deceased, to complainants' amended bill of complaint, was filed herein on the 18th day of February, 1892, and is hereto annexed.

The replication of complainants to the answer of John Robarts and George L. Mesnager, executors of the last will and testament of Miguel Leonis, deceased, was filed herein on the 18th day of February, 1892, and is hereto annexed.

The answer of defendants A. W. Potts and J. F. Holbrook, to complainants' bill of complaint, was filed herein on the 2nd day of March, 1892, and is hereto annexed.

An affidavit in proof of the publication of the order requiring absent defendants to appear was filed herein on the 3rd day of March, 1892, and is hereto annexed.

Complainants' replication to the answer of A. W. Potts and J. F. Holbrook was filed herein on the 4th day of March, 1892, and is hereto annexed.

The answer of Will D. Gould and Mrs. Mary L. Gould to complainants' bill of complaint, was filed herein on the 4th day of March, 1892, and is hereto annexed.

Complainants' replication to the answer of Will D. Gould and Mrs. Mary L. Gould, was filed herein on the 5th day of March, 1892, and is hereto annexed.

The answer of defendants Thomas J. Johannsen, S. A. Waldron, Thomas Menzies, Sr., W. R. Hughes, Nicholas Cochems, Jacob Scherer, F. A. Geir, Carl A. Heesch, J. F. Duehren, Julius Abrahamson, Hugo Abrahamson, Max Shirpser, Henrietta Shirpser, Rebecca Jetta Shirpser, Jacob Harp, Pablo Lopez, Mrs. Jesus Ord de Andrada, Fairmont Land and Water Co., L. E. Mosher, A. W. Butler, Farming and Fruit Land Co., C. N. Wilson and S. P. Cushman, to complainants' bill of complaint, was filed herein on the 5th day of March, 1892, and is hereto annexed.

Complainants' replication to the answer of Thomas J. Johannsen, et al., was filed herein on the 5th day of March, 1892, and is hereto annexed.

On the 5th day of March, 1892, the defendants Pacific Coast Oil Company and J. B. Randol, appeared herein by Messrs. Houghton, Silent & Campbell, their solicitors.

Defendants' answer to the amended bill of complaint, was filed herein on the 14th day of March, 1892, and is hereto annexed.

Complainants' replication to the answer of The Southern Pacific Railroad Company, and others, was

filed herein on the 2nd day of August, 1892, and is hereto annexed.

On the 10th day of April, 1893, complainants filed herein their motion for an injunction, which is hereto annexed.

On the 25th day of April, 1893, an order was filed and entered herein, substituting Jackson Alpheus Graves as party defendant in the place and stead of the Atlantic and Pacific Fibre Importing and Manufacturing Company, Limited, which said order is hereto annexed.

On the 3d day of May, 1893, the Court made and entered an order herein denying complainants' motion for an injunction, a copy of which order is hereto annexed.

On the 12th day of June, 1893, the Court made and entered an order herein allowing defendants to file herein their amended answer to complainants' amended bill of complaint, a copy of which order is hereto annexed.

Defendants' amended answer was filed herein on the 12th day of June, 1893, and is hereto annexed.

On the 17th day of July, 1893, the Court made and entered an order herein allowing the withdrawal of complainants' claim for damages, a copy of which order is hereto annexed.

On the 17th day of July, 1893, complainants filed herein their notice of the withdrawal of said claim for damages, which is hereto annexed.

On the 16th day of October, the Court made and entered an order herein substituting S. M. White, Esq.,

and D. L. Russell, Esq., as attorneys for the estate of Miguel Leonis, a copy of which order is hereto annexed.

On the 6th day of December, 1893, the amended answer of the executors of the estate of Miguel Leonis was filed herein, and is hereto annexed.

On the 21st day of December, 1893, the Court made and entered an order herein substituting D. L. Russell, Esq., and Horace Bell, Esq., as solicitors for the executors of the estate of Miguel Leonis, a copy of which order is hereto annexed.

The testimony taken in said cause on behalf of the respective parties was duly filed in the Clerk's office of the said Circuit Court.

On the 7th day of May, 1894, and on the following 8th and 9th days of May, 1894, being days in the January term, A. D. 1894, of the said Circuit Court, present the Honorable ERSKINE M. Ross, District Judge, the hearing of said cause before the Court was had upon the pleadings and proofs theretofore filed in said cause, and upon certain oral and documentary evidence produced before the Court on said hearing, and on said days said cause was argued by counsel, and on said 9th day of May, 1894, was submitted to the Court for its consideration and decision upon said argument and upon briefs which were thereafter filed on behalf of the respective parties by counsel.

On the 25th day of June, 1894, the Court made and entered an order herein that a decree be entered for complainants, the United States of America, as prayed for in the bill.

On the 19th day of July, 1894, a final decree in favor of complainants was accordingly signed, filed, entered and recorded herein, and is hereto annexed.

CASE NO. 184.

*In the Circuit Court of the United States, Ninth Circuit,
Southern District of California.*

THE UNITED STATES OF AMERICA,
Plaintiff,
vs.

THE SOUTHERN PACIFIC RAILROAD
COMPANY and D. O. Mills and
Garrit L. Lansing, Trustees; the
City Brick Company, Atlantic
and Pacific Fibre Importing and
Manufacturing Company, Limited;
Julius Abrahamson, Hugo
Abrahamson, Mrs. Jesus Ord de
Andrade, Mrs. Thomas Allison,
Mrs. Mary Backman, Mrs. Matilda
L. Barber, Henry A. Barelay, E.
T. Barber, Thomas N. Beek, A. N.
Benham, Jessie Martin Blanchard,
E. H. Blood, Ira H. Bradshaw, B.
B. Briggs, Philomela T. Bunell,
Frederick H. Busby, A. W. Butler,
H. A. Bond, William H. Carlson,
William H. Carlson, V. E. Carson,
B. F. Carter, Benjamin F. Carter,
Harry Chandler, Fred. Chandler,
Walter S. Chaffee, J. N. Chapman,
F. O. Christensen, Mrs. L. C.
Chormicle, Byron O. Clark, George
Claussen, Clarence T. Cleve, Ni-
cholas Cochems, Nathan Cole,
Jr., Peter Cook, I. D. Cory,

Seaton T. Cull, Stefano Cuneo,
J. A. Dahl, Andrew J. Darling,
Thomas A. Delano, Richard
Dillon, John Ditter, David Dol-
been, John F. Duehren, James F.
Dunsmoor, Edward G. Durant,
Robert Dunn, Henry Elms, Fair-
mont Land and Water Company,
Farming and Fruit Land Com-
pany, George W. Fentrees, S. W.
Ferguson, William Ferguson,
William Freeman, Joseph W.
Furnival, J. Garber, F. C. Garbutt,
J. Drew Gay, F. A. Geier, Ambrose
F. George, Will D. Gould, Mrs.
Mary L. Gould, Thomas E. Gould,
James Greton, W. F. Grosser, D.
J. Haines, Herman Haines, James
M. Hait, Simeon Hamberg, Jacob
Harpe, Alice A. Hall, Calvin
Hartwell, William T. Hamilton,
William T. Hamilton, James
Hamilton, Peter Hamilton, John
C. Haskell, John C. Hay, Mary
Jackson Hall, Julius Heyman, J.
M. Hill, John D. Hoffman, August
Hoelling, J. F. Holbrook, W. R.
Hughes, George A. Hunter, J. F.
Houghton, E. J. Ismert, W. W.
Jenkins, Thomas J. Johannsen, M.
D. Johnson, John J. Jones, A. S.
Joseph, John Kenealey, Frederick

Kenworthy, Richard Kichline,
Joseph Kurtz, Charles Kutsehmar,
Mrs. Ammoretta J. Lanterman,
T. B. Lawhead, L. B. Lawson,
Lawson M. La Fetra, Stephen
L. Leighton, John Robarts and
George L. Mesnager, Executors of
the last Will and Testament of
Miguel Leonis, deceased, George
Loomis, George Loomis, Marion
C. Loop, Pablo Lopez, Daniel Luce,
G.W. Mack, John B. Martin, Cora L.
Mathison, Ezra May, Angus S. Mc-
Donald, A. M. Melrose, Mrs. Flossy
Melrose, W. E. McVay, Thomas
Mensies, J.G. Miller, John Million,
Mrs. Mamie O. Million, H. H.
Mize, Thomas F. Mitchell, W. H.
Mosely, L. E. Mosher, Joseph
Mullally, Andrew Myers, D. C.
Newcomb, Albert E. Nettleton,
North Pasadena Land and Water
Company, James O'Reilly, George
L. Ott, Pacific Coast Oil Company,
J. H. Painter, M. D. Painter, Mrs.
Annie Palen, J. R. Pallett, W. A.
Pallett, T. A. Pallett, C. O. Par-
sons, F. W. Pattee, James Peirano,
John J. Peckham, Ramon Pereira,
Daniel Phelan, Edward E. Perley,
McH. Pierce, William Pisch, R.
M. Pogson, A. W. Potts, Lafayette
S. Porter, A. J. Praster, F. H.

Prescott, Lewis H. Price, Charles Raggis, W. B. Ralphs, James B. Randol, C. P. Randolph, F. M. Randolph, Francisco Real, George H. Reed, John Rea, Otto Rinderknecht, Felipe Rivera, James Robertson, George D. Rowan, S. D. Savage, Jacob Scherer, George W. Seifert, Luciano Sequoia, Henry C. Sherman, Henrietta Shirpser, Rebecca Jetta Shirpser, David Shirpser, Max Shirpser, Gianbattista Sinaco, J. S. Slauson, J. Wallen Smith, Mrs. Maggie Smith, E. Sommer, W. A. Spencer, H. G. Stevenson, H. J. Stevenson, M. W. Stimson, Robert Strathearn, R. P. Strathearn, Eleanor Sussman, D. M. Sutherland, John Sweeney, W. H. Teggart, James P. Taylor, Mary G. Tongier, James R. Townsend, Mrs. C. L. True, L. Tunison, J. S. Turner, George S. Umpleby, F. Veysset, George Vilas, Alden R. Vining, Daniel A. Wagner, S. A. Waldron, W. W. Wallace, C. H. Watts, Mrs. Julia J. Wheeler, A. C. Whitaere, M. L. Wicks, Moye Wicks, Mrs. Jennie L. Wicks, Mary C. Williams, C. N. Wilson, Robert N. C. Wilson, J. Youngblood, and Jackson A. Graves,

Defendants.

Decree in Equity.

This cause, having been regularly set for to-day, was on this 25th day of June, 1894, duly heard in open court.

The Plaintiff appeared by Mr. George J. Denis, United States Attorney, and Mr. Joseph H. Call, special attorney. The Defendants appeared by Mr. William F. Herrin, Mr. L. E. Payson and Mr. Joseph D. Redding, their solicitors. Mr. D. L. Russell and Mr. Horace Bell also appeared, as solicitors for the executors of the estate of Miguel Leonis, deceased, Defendants.

The testimony having been taken, and all the evidence introduced, and the cause having been duly argued and submitted, it is by the Court now

Ordered, adjudged and decreed: That the United States of America is the owner, by title in fee simple absolute, of all the sections of land designated by odd numbers, in Townships Three (3) and Four (4) North; Ranges Five (5), Six (6) and Seven (7) West; Township One (1) North, Ranges Sixteen (16), Seventeen (17) and Eighteen (18) West; Township Six (6) and South three-fourths of Township Seven (7) North, Ranges Eleven (11), Twelve (12), Thirteen (13), Fourteen (14), Fifteen (15), Sixteen (16), Seventeen (17), Eighteen (18) and Nineteen (19) West; also all of the sections of land designated by odd numbers, as shown by the public surveys, embraced within the Townships from number Two (2) North to number Five (5) North, both numbers included, and Ranges from number Eight (8) West to number Eighteen (18) West, both numbers included (except Sections Twenty-three

(23) and Thirty-five (35) in Township Four (4) North, Range Fifteen (15) West, and except Sections One (1), Eleven (11) and Thirteen (13) in Township Three (3) North, Range Fifteen (15) West); also the unsurveyed lands within said area which will be designated as odd-numbered sections, when the public surveys of the United States shall have been extended over such townships. All the lands are herein described as of San Bernardino Base and Meridian, and are situated in the State of California.

And the defendants are, and each of them is, forever enjoined and restrained from chopping upon or carrying from the said lands any trees, timber or wood, and from claiming or asserting any right, title or interest in or to the said lands or any thereof.

It is further ordered, adjudged and decreed. That each and every patent heretofore issued by the United States to the Southern Pacific Railroad Company in pursuance of the Act of Congress approved July 27, 1866 (14 Stats. 292), and the Act entitled, "An Act to incorporate the Texas & Pacific Railroad Company and to aid in the construction of its road, and for other purposes," approved March 3, 1871, (16 Stats. 573), and either of said acts, and all acts amendatory and supplemental to either thereof, purporting to convey any of the lands hereinbefore described, to said Southern Pacific Railroad Company, is null, void, and vacated.

It is further ordered, adjudged and decreed: That each and every patent which has heretofore issued by the United States to the defendants, or to any of them, in pursuance of the pre-emption, homestead, or any

other general land law of Congress, is excepted from and in nowise affected by the provisions of this decree; nor shall this decree in anywise affect any right which the defendants, or any of them, other than the said Southern Pacific Railroad Company, now have or may hereafter acquire in, to, or respecting any of the lands hereinbefore described, in virtue of the Act of Congress entitled, "An Act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands, and for other purposes," approved March 3, 1887; nor shall this decree in anywise affect any right which the United States may have to hereafter recover from said Southern Pacific Railroad Company the ordinary government price for any of said lands patented to said company which the Secretary of the Interior may determine have been sold by said Company to either or any of the defendants herein in good faith, and which may be patented to such bona fide purchasers in pursuance of said Act of March 3, 1887, if any such there be; nor shall this decree in anywise affect any right, title or interest which the defendant Southern Pacific Railroad Company now had or may hereafter acquire to any right of way for one hundred feet in width on each side of the main track of its road, to station buildings, workshops, depots, machine shops, switches, sidetracks, turntables, water stations, and all grounds necessary for the same.

And it is further ordered, adjudged and decreed: That the plaintiff have and recover its costs of this suit taxed at 1924 05-100 dollars.

Done and signed this 19th day of July, 1894.

ROSS,
Dist. Judge.

Decree entered and recorded July 19th, 1894.

WM. M. VAN DYKE,
Clerk.

[Endorsed]: No. 184. U. S. Circuit Court, Ninth Circuit, Southern District of California. The United States of America vs. the Southern Pacific Railroad Company, et al. Final Decree. Filed Jul. 19, 1894. Wm. M. Van Dyke, Clerk.

Whereupon, said bill of complaint, subpoena, alias subpoena returnable July 7th, 1890, copy of order requiring D. O. Mills and Garrit L. Lansing, Trustees, to appear, plead, answer or demur to the bill of complaint herein, plea of defendants, stipulations, amendment to bill of complaint filed March 6th, 1891, answer of defendants to bill of complaint and amendment to bill, replication to answer, order allowing withdrawal of replication and granting time to file amended bill, amended bill, subpoena to appear and answer amended bill, copy of order substituting John Robarts and George L. Mesnager executors of the last will and testament of Miguel Leonis as party defendants herein, amendment to amended bill, subpoena requiring John Robarts and George L. Mesnager, executors of the last will and testament of Miguel Leonis, deceased, to appear and answer said amended bill, disclaimer of defendant J. S. Slauson, replication to answer of J. S.

Slauson, alias subpoena requiring certain defendants to appear and answer said amended bill of complaint, copy of order requiring certain defendants to appear and answer said bill of complaint, answer of John Robarts and George L. Mesnager, executors of the last will and testament of Miguel Leonis, deceased, to amended bill of complaint, replication to said answer of John Robarts and George L. Mesnager, executors of the last will and testament of Miguel Leonis, deceased, answer of defendants A. W. Potts and J. F. Holbrook to bill of complaint, affidavit in proof of publication of order requiring absent defendants to appear, replication to answer of A. W. Potts and J. F. Holbrook, answer of Will D. Gould and Mrs. Mary L. Gould, replication to answer of Will D. Gould and Mrs. Mary L. Gould, answer of defendant Thomas J. Johannsen, et al., to bill of complaint, replication to answer of Thomas J. Johannsen, et al., defendants' answer to amended bill of complaint, replication to answer of the Southern Pacific Railroad Company and others, complainants' motion for injunction, order substituting Jackson Alpheus Graves as party defendant in the place and stead of the Atlantic and Pacific Fibre Importing and Manufacturing Company, Limited, copy of order denying complainants' motion for injunction, copy of order allowing defendants to file amended answer to amended bill, amended answer, copy of order allowing withdrawal of complainants' claim for damages, notice of withdrawal of claim for damages, copy of order substituting S. M. White, Esq., and D. L. Russell, Esq., as attorneys for the estate of Miguel Leonis, amended answer of Executors of Estate

of Miguel Leonis, copy of order substituting D. L. Russell, Esq., and Horace Bell, Esq., as solicitors for the Executors of the Estate of Miguel Leonis, and final decree, are hereto annexed; said final decree being duly signed, filed and enrolled, pursuant to the practice of said Circuit Court.

Attest, etc.,

(Seal.)

WM. M. VAN DYKE,
Clerk.

[Endorsed]: No. 184. In the Circuit Court of the United States, Ninth Judicial Circuit, for the Southern District of California. The United States of America vs. The Southern Pacific Railroad Company, et al. Enrolled Papers. Filed July 19th, 1894. Wm. M. Van Dyke, Clerk. Recorded Decree Register Book No. 1, page 542.

*In the Circuit Court of the United States, Ninth Circuit,
Southern District of California.*

UNITED STATES OF AMERICA, }
vs. } No. 184.
SOUTHERN PACIFIC RAILROAD COMPANY, AND OTHERS. }

This suit was brought by the Government against the Southern Pacific Railroad Company and a large number of individual defendants to obtain a decree declaring invalid the company's claim to a large number of sections of land under a grant made by Congress to aid in the construction of its railroad, and to annul such government patents as have been issued

to the company for such lands and such contracts and deeds therefor as have been made by the company to the individual defendants, as well as a mortgage thereon alleged to have been made by the company to the defendants, Mills and Lansing, to secure the payment of certain indebtedness of the defendant company.

The lands involved in the suit are said by counsel to embrace about nine hundred thousand acres, for one hundred thousand acres of which it is said the Government has issued its patents, and much of which is held by the individual defendants under deeds or contracts of sale from the railroad company. The bill as amended alleges the complainants' original ownership of the lands in question, the grant by Congress to the Atlantic & Pacific Railroad Company of July 27th, 1866, its acceptance of the grant and the definite location of the line of road it was by Congress authorized to build, the subsequent forfeiture of the granted lands by reason of the failure of the company to build the road, and the Act of Congress declaring the forfeiture for the benefit of the Government. The amended bill also sets up the grant by Congress to the Southern Pacific Railroad Company of March 3d, 1871, and the various acts performed by that company thereunder. These grants are specifically referred to in the recent opinion of the Supreme Court in the case of the same title as the present reported in 146 U. S., page 570. The bill as amended also alleges in substance that the lands in controversy were within the limits of the Atlantic & Pacific grant, for which reason they were excluded from the grant to the

Southern Pacific Company. It also alleges that the Southern Pacific Company claims to have pretended patents issued by the United States in due form of law purporting to convey to that company a portion of the lands in suit, but which lands are unknown to complainant; that certain defendants, unknown to complainant, claim to be *bona fide* purchasers for value from the Southern Pacific Company and claim that their rights to certain tracts of the land in controversy are protected and confirmed by the Act of Congress approved March 3, 1887, entitled, "An Act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands and for other purposes" (24 Stats. 556); that the defendants, Mills and Lansing, have a mortgage or deed of trust from the defendant company, covering or purporting to cover the lands in controversy, to secure the payment of certain indebtedness of the company to them as trustees, which mortgage is dated April 1st, 1875, and executed in due form of law, and recorded in the counties in which the lands are situate; that the lands in question are naturally timbered and wooded lands, and have timber and wood thereon, and that the defendants, while claiming and pretending to own some interest in the lands, at various times during the last five years, have unlawfully entered upon them and chopped down the timber and trees thereon and carried away such timber and trees and converted the same to their own use, and are now removing from the lands wood so cut, and are threatening to chop down other trees on the lands,

and, unless enjoined, will do so, to the great and irreparable injury of the complainant; that the defendant company while pretending and claiming to own some interest in the lands in controversy, at various times during the past ten years, to the complainant unknown, by pretended contracts and conveyances has pretended to sell and convey large portions of the lands to the other defendants, the amount and description of which are unknown to complainant, and has thus realized from wood and timber on the lands large sums of money, which it has appropriated and converted to its own use.

The complainant asks, among other things, that the defendant company be required to state (1), the names of all of the pretended purchasers of said lands, or any portion thereof, from the company; (2) the amounts and descriptions of lands so pretended to be sold; (3) that each and all of the defendants be required to state the nature and extent of their pretended claim or claims to said lands.

The respondents having answered the bill as amended, a reference was made to the Master to take the testimony offered by the respective parties, which has been partly but not wholly done. At this stage in the proceedings, an application is made on the part of the complainant, based upon the pleadings in the cause, for an injunction directed to all of the defendants, restraining them from cutting down or carrying away any wood, trees or timber from the lands in controversy.

Annexed to and made a part of the answer to the amended bill, is a schedule showing the various por-

tions of the lands in controversy for which the defendant company has executed to the individual defendants deeds of conveyance and contracts of sale, amounting in the aggregate to many thousands of acres, under which, the answer avers, the respective parties claim and hold in good faith and for value.

The answer puts in issue, among other things, all averments of the amended bill in respect to the location of the line of the Atlantic & Pacific Company, and sets up that that company never did definitely locate its line of road west of the Colorado River. Of course, the Court cannot now know what the evidence may show in regard to that fact. If established as alleged by the defendants it may be that it would result that the lands in controversy never vested in the Atlantic & Pacific Company, but did pass to the Southern Pacific Company under the grant to it, for, in the late opinion of the Supreme Court respecting these grants (146 U. S., page 606,) it is said, "The question is asked: Supposing the Atlantic & Pacific Company had never located its line west of the Colorado River, would not those lands have passed to the Southern Pacific Company under its grant?" Very likely that may be so. The language of the Southern Pacific Company's grant is broad enough to include all land along its line, and if the grant to the Atlantic & Pacific Company had never taken effect it may be that there is nothing which would interfere with the passage of the title to the Southern Pacific Company.

In view of the issues raised by the pleadings and of the facts alleged by complainant, and admitted by the defendants, that there are outstanding patents of the

Government purporting to convey to the defendant company large portions of the disputed premises, and that under and by virtue of those patents and the grant from Congress the defendant company has, for value received, executed deeds of conveyance and contracts of sale to the individual defendants for a large part of such lands, under which such defendants possess and claim them in good faith and for value paid, therefore, I do not think an injunction should be awarded in advance of a hearing of the cause on the merits.

The motion is accordingly denied.

ROSS,

District Judge.

[Endorsed:] No. 184. U. S. Circuit Court, Southern District of California. United States of America, Complainants, vs. Southern Pacific Railroad Company, et al., Defendants. Opinion. Filed May 3, 1893. Wm. M. Van Dyke, Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
Southern District of California.*

UNITED STATES OF AMERICA,

Complainant,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY, ET AL.,

Respondents.

No. 184.

This is a suit in equity brought by the United States, the chief object of which is the establishment of the alleged title of the Government to about 700,000 acres

of land situated in Los Angeles and Ventura counties, of this State, designated, according to the public surveys of the United States, as odd-numbered sections, and lying within the primary or 20-mile limit of the grant of July 27, 1866, made by Congress to the Atlantic and Pacific Railroad Company, and also within the primary limits of the subsequent grant of March 3, 1871, made by Congress to the Southern Pacific Railroad Company, and which lands are claimed by the last named company, and those holding under it, by virtue of its grant. For nearly 100,000 acres of these lands the United States subsequently issued its patents to the Southern Pacific Railroad Company, a large part of which land, so patented, that company conveyed, for a valuable consideration, to third persons, all of which patents and some of which conveyances were executed prior to the institution of this suit. The Southern Pacific Company also contracted in writing with various other persons to convey to them, severally, other portions of said patented lands, and still other of said lands embraced within the limits of its grant. These persons are also made parties defendant to the bill, the objects of which include the annuling of the said patents and the quieting of the complainants' alleged title to the whole of the lands embraced by the suit. The bill also makes parties defendant D. O. Mills, Garrit L. Lansing, and Lloyd Tevis, as Trustees of certain mortgages executed by the Southern Pacific Railroad Company upon the lands covered by its grant, to secure the payment of certain bonds issued by it.

By the first section of the Act of July 27, 1866, (14 Stats., 292), Congress incorporated the Atlantic and

Pacific Railroad Company, and authorized it to construct and operate a railroad from a point near the Town of Springfield, in the State of Missouri, westward through Albuquerque, "and thence along the 35th parallel of latitude, as near as may be found most suitable for a railway route, to the Colorado River at such point as may be selected by such company for crossing; thence by the most practicable and eligible route to the Pacific" Ocean.

To aid in the construction of the road, there was granted to the Atlantic and Pacific Company, by the 3rd section of the Act, every alternate section of public land not mineral, designated by odd numbers, to the amount of 10 sections on each side of the road whenever it passes through a State, "and whenever on the line thereof, the United States have full title not reserved, sold, granted or otherwise appropriated, and free from pre-emption or other claims or rights at the time the line of said road is designated by a plat thereof, filed in the Office of the Commissioner of the General Land Office; and whenever," etc.

The 18th Section of the Act provided as follows:

"That the Southern Pacific Railroad, a company incorporated under the laws of the State of California, is hereby authorized to connect with the said Atlantic & Pacific Railroad formed under this Act, at such point, near the boundary line of the State of California as they shall deem most suitable for a railroad line to San Francisco, and shall have a uniform gauge and rate of freight or fare with said road; and, in consideration thereof, to aid in its construction, shall have the same grants of land, subject to all the condi-

tions and limitations herein provided, and shall be required to construct its road under the like regulations as to time and manner with the Atlantic & Pacific Railroad herein provided for."

On March 3, 1871, Congress passed an act, entitled "An Act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes." (16 Stats., 573). By the 23rd Section of that Act, it was provided as follows:

"That for the purpose of connecting the Texas Pacific Railroad with the City of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles to the Colorado River, with the same rights, grants and privileges, and subject to the same limitations, restrictions, and conditions, as were granted to said Southern Pacific Railroad Company of California by the Act of July 27, 1866; provided, however, that this section shall in no way affect or impair the rights, present or prospective, of the Atlantic & Pacific Railroad Company, or any other railroad company."

These grants were the subject of full consideration in the cases entitled United States vs. Southern Pacific Railroad Company, et als., (Nos. 67, 68, 69, consolidated), Same vs. Colton Marble & Lime Company, et als. (No. 88), and United States vs. Southern Pacific Railroad Company, et als. (Nos. 177-178), reported in 45 Fed. Rep., 596, and 46 Fed. Rep., 683. My views in regard to them, while meeting with the approval of two of the Justices of the Supreme Court—Justices

Field and Gray—were by a majority of the Court overruled. The cases in the Supreme Court will be found reported in 146 U. S., 570 and 615. A careful examination of the opinions of the majority of the Court in those cases shows that it decided, among other things, that it was not the intent of Congress that any of the lands embraced by the grant of July 27, 1866, to the Atlantic & Pacific Company, should pass conditionally to the Southern Pacific Company by, the grant of March 3, 1871, but, on the contrary, that Congress intended that all lands embraced by the prior grant to the Atlantic & Pacific Company should be definitely excepted from the later grant to the Southern Pacific Company, and that the Atlantic & Pacific Company, having forfeited the lands granted to it by the Act of July 27, 1866, by reason of its failure to comply with the conditions upon which the grant was made, and Congress having, by the Act of July 6, 1886, declared the forfeiture, the latter resulted in restoring the lands to the Government. "The forfeiture," said the Court, "was not for the benefit of the Southern Pacific; it was not to enlarge its grant as it stood prior to the act of forfeiture. It had given to the Southern Pacific all that it had agreed to in its original grant; and now, finding that the Atlantic & Pacific was guilty of a breach of a condition subsequent, it elected to enforce a forfeiture for that breach, and a forfeiture for its own benefit."

The Court further observed: "If the Act of forfeiture had not been passed by Congress, the Atlantic & Pacific could yet construct its road, and that, constructing it, its title to these lands would become perfect."

In those cases, the defendant company contended that no map of definite location of its line between the Colorado River and the Pacific Ocean was ever filed by the Atlantic & Pacific Company or approved by the Secretary of the Interior. The Supreme Court said that contention was based upon these facts: "The Atlantic & Pacific Company claimed that, under its charter, it was authorized to build a road from the Colorado River to the Pacific Ocean, and thence along the coast up to San Francisco; and it filed maps thereof in four sections. San Buenaventura was the point where the westward line first touched the Pacific Ocean. One of these maps was of that portion of the line extending from the western boundary of Los Angeles county, a point east of San Buenaventura and through that place to San Miguel Mission, in the direction of San Francisco. In other words, San Buenaventura was not the terminus of any line of definite location from the Colorado River westward, whether shown by one or more maps, but only an intermediate point on one sectional map. When the four maps were filed, and in 1872 the Land Department, holding that the Atlantic & Pacific Company was authorized to build not only from the Colorado River directly to the Pacific Ocean, but also thence north to San Francisco, approved them as establishing the line of definite location. Subsequently, and when Mr. Justice Lamar was Secretary of the Interior, the matter was re-examined, and it was properly held that, under the Act of 1866, the grant to the Atlantic & Pacific was exhausted when its line reached the Pacific Ocean." San Buenaventura was, therefore, held to be the western terminus.

nus, and the location of the line approved to that point." And the Court held that, "The fact that its line was located and maps filed thereof in sections is immaterial. *St. Paul & Pacific Railroad vs. Northern Pacific Railroad*, 139 U. S., 1. Indeed, all the transcontinental roads, it is believed, filed their maps of route in sections. So the question is whether the filing a map of definite location from the Colorado River through San Buenaventura to San Francisco, under a claim of right to construct a road the entire distance, is good as a map of definite location from the Colorado River to San Buenaventura, the latter point being the limit of the grant. We think, unquestionably it is."

In the present case it is urged, on the part of the defendants, that in the former cases the Supreme Court determined the questions in relation to the location of the line of the Atlantic & Pacific Company as one of law; that there were no issues of fact in either of those cases in respect to the character of the maps there spoken of, or of the surveys upon which they were based, whereas, in the present case, the pleadings tender issues of fact in respect to all of those matters, upon which a large amount of evidence has been introduced. And this evidence, the defendants contend, establishes that the Atlantic & Pacific Company never did definitely locate its line between the Colorado River and the Pacific Ocean, and that the pretended maps of definite location were but fraudulent pretenses and amounted at most to but a general designation of its contemplated route. In my opinion, the evidence in the present case shows that to be true. It is unneces-

sary, however, to analyze it, and show the reasons for this conclusion; but it is as well to state that it finds strong support in the fact that if the maps filed by the Atlantic & Pacific Company in 1872, of its route between the Colorado River and the Pacific Ocean, were maps of the *definite* location of its road, it never did file any map or maps designating its *general* route; for it is not pretended that the Atlantic & Pacific Company made more than one designation of the line in question. Yet the Court, in United States vs. Southern Pacific Railroad Company, et als., 146 U. S. 600, in speaking of this very grant of July 27, 1866, as well as in the case of Buttz vs. Northern Pacific Railroad Company, 119 U. S., 55, in speaking of the similar grant to the Northern Pacific Company, held that "Congress provided for two separate matters; one, *the fixing of the general route*, and the other the designation of the line of definite location." Nevertheless, in view of the rulings of the Supreme Court in the former cases regarding the grants in question, by which this Court of course must be controlled, I do not see that it is essential to the Government's case that the line of the Atlantic & Pacific Company should have been *definitely* located: for the surveys made opposite the lands in controversy, and maps thereof filed by it, constituted at least a designation of the *general* route of the road, upon which designation the law operated to withdraw all lands within the limits of the grant for the benefit of the grantee. Buttz vs. Northern Pacific Railroad, 119 U. S., 55; St. Paul R. R. Co. vs. Northern Pacific Railroad Company, 139 U. S., 1. The fact that the Southern Pacific Company

had previously, to-wit, on the 3rd day of April, 1871, filed in the office of the Commissioner of the General Land Office a map designating the general route of the line it was authorized to build, and did build, under and by virtue of the Act of March 3, 1871, and that thereafter, to-wit, on the 21st of April, 1871, an order was made by the Commissioner of the General Land Office withdrawing all lands within the primary as well as the indemnity limits of that grant from sale, location, pre-emption, or homestead entry, could not, under the rulings of the Supreme Court in the former cases, in any way affect the prior grant, which, up to the time of its forfeiture on July 6, 1886, remained effective and paramount. While, up to the time of the withdrawal for the benefit of the Southern Pacific Company, and for nearly one year thereafter, the Atlantic & Pacific Company had not filed any map indicating its line of road between the Colorado River and the Pacific Ocean, still, when it did do so, in 1872, by maps showing, if not the definite location of its line, at least its general route (its right under its grant being, as decided by the Supreme Court, wholly unaffected by the subsequent grant to the Southern Pacific Company, and consequently by the proceedings had and taken thereunder) the law itself operated to withdraw all public lands within the limits of the grant to the Atlantic and Pacific Company for the benefit of the grantee. (*Cases supra.*) And the rights of that company continuing, as held by the Supreme Court, until the act of forfeiture passed by Congress, July 6, 1886, and the forfeiture being for the benefit of the United States, the necessary result is that when

it occurred the lands were restored to the Government and did not pass to the Southern Pacific Company or to its grantees, who necessarily took with notice of the grants; for such grants are laws as well as contracts. (97 U. S., 491; 146 U. S., 598.)

It results, I think, that there must be a decree for the Government, and it is so ordered.

ROSS,
District Judge.

[Endorsed]: No. 184. U. S. Circuit Court. So. Dist. of California. The United States of America, vs. the Southern Pacific Railroad Company, et al. Opinion. Filed Jun. 25, 1894. Wm. M. Van Dyke, Clerk.

At a stated term, to-wit, the January term, A. D. 1892, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, held at the court-room in the City of Los Angeles, on Monday, the twenty-fifth day of April, in the year of our Lord one thousand eight hundred and ninety-two:

Present: The Honorable ERSKINE M. ROSS, District Judge.

THE UNITED STATES OF AMERICA, Complainants, vs. THE SOUTHERN PACIFIC RAILROAD COMPANY, ET AL., Defendants.	} No. 184.
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Upon application of Joseph H. Call, Esq., Special Assistant United States Attorney, and of counsel for com-

plaintiffs, in open court, it is ordered, that in taking testimony before the Master, said Joseph H. Call, Esq., Special Assistant United States Attorney, and of counsel for plaintiffs, as aforesaid, may introduce and use in evidence any depositions or documentary evidence on file in this Court, in the cause entitled The United States of America vs. The Southern Pacific Railroad Company, et al., Nos. 67, 68 and 69, consolidated, and upon making certified copies of such evidence, certified by this Clerk of this Court, or the Examiner or Master in Chancery, said original evidence shall be returned to the files of said cause Nos. 67, 68 and 69, consolidated.

At a stated term, to-wit, the August term, A. D. 1892, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, held at the courtroom, in the City of Los Angeles, on Wednesday, the fourteenth day of September, in the year of our Lord one thousand eight hundred and ninety-two:

Present: The Honorable ERSKINE M. Ross, District Judge.

UNITED STATES OF AMERICA,
Complainants,
vs.
THE SOUTHERN PACIFIC RAILROAD
COMPANY, ET AL.,
Defendants. } No. 184.

On motion of J. H. Call, Esq., Special Assistant United States Attorney, of counsel for complainants, and with the consent of Joseph D. Redding, Esq., of

counsel for defendants, it is ordered that said cause be referred to E. H. Lamme, Esq., Standing Master and Examiner in Chancery of this court, to take the testimony and report the same to the Court.

184.

In the Circuit Court of the U. S., 9th Circuit, South Dist.

UNITED STATES,

v.

SOUTHERN P. R. R. CO., ET AL.,

}

Notice to Complainant and its Solicitors, that Evidence Shall be Taken Orally in the Cause.

To complainant, to George J. Denis, U. S. Atty. and to Joseph H. Call, Solicitor for Complainant.

You will please take notice, that the respondents, and each and all of them, desire that the evidence to be adduced in the above cause shall be taken orally; and this to be whether upon the present pleadings or upon amended pleadings hereafter; please govern yourselves accordingly.

JOSEPH D. REDDING,
Solicitor for Respondents.

April 26th, 1893.

Reed, copy hereof Apr. 26, 1893.

JOSEPH H. CALL,
Spl. Asst. U. S. Atty.

[Endorsed]: 184. Circuit Court, U. S. v. S. P. R. R. Co. Notice that Testimony is to be Taken Orally. Joseph D. Redding, Sol. Respts. Filed Apr. 26, 1893. Wm. M. Van Dyke, Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
Southern District of California.*

UNITED STATES OF AMERICA,
Complainant,
vs.
SOUTHERN PACIFIC RAILROAD CO.,
ET AL.,
Respondents. } No. 184.

To George J. Denis, Esq., United States District Attorney, and Solicitor for Complainant in the above entitled action, and to Joseph H. Call, Esq., Special United States Attorney:

Gentlemen: You will please take notice, that the respondents in the above entitled action will, by their solicitor, Joseph D. Redding, Esq., move this Honorable Court on Thursday, the 22nd of June, 1893, at the opening of said court, or as soon thereafter as counsel can be heard, to assign a time within which the complainant shall take its evidence in support of the bill of complaint in the above entitled action, and also assign a time thereafter within which the respondents shall take their evidence in defense, and also assign a time thereafter within which the complainant shall take its evidence in reply.

Said motion is based on Rule 67 of the Rules of Practice in Equity, pertaining to this Court, as amended May 3rd, 1892.

The papers to be used on said motion will be all of the records in the above entitled action.

Yours respectfully,

JOSEPH D. REDDING

Solicitor for Respondents

Dated San Francisco, June 15th, 1893.

[Endorsed]: No. 184. Circuit Court of the United States, Ninth Circuit, Southern District of California. United States vs. S. P. R. R. Co. Notice of Motion. Joseph D. Redding, Solicitor for Respts., Room 35 Chronicle Bldg., San Francisco, Cal. Filed Jun. 16, 1893. Wm. M. Van Dyke, Clerk.

At a stated term, to-wit, the January term, A. D. 1893, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, held at the courtroom in the City of Los Angeles, on Wednesday, the twenty-eighth day of June, in the year of our Lord one thousand eight hundred and ninety-three:

Present: The Honorable ERSKINE M. ROSS, District Judge.

THE UNITED STATES OF AMERICA,
Complainants, }
vs. } No. 184.
THE SOUTHERN PACIFIC RAILROAD
COMPANY, ET AL., }
Defendants.

This cause coming on this day to be heard on defendants' motion that the Court assign a time within which the complainant shall take its evidence in support of the bill of complaint in the above-entitled action, and also assign a time thereafter within which

the respondents shall take their evidence in defense, and also assign a time thereafter within which the complainant shall take its evidence in reply, George J. Denis, Esq., United States Attorney for the Southern District of California, and Joseph H. Call, Esq., Special Assistant United States Attorney, appearing as counsel for complainants, and Joseph D. Redding, Esq., appearing as counsel for defendants, and said motion having been argued by Joseph D. Redding, Esq., of counsel for defendants, in support thereof, and by George J. Denis, Esq., United States Attorney and Joseph H. Call, Special Assistant United States Attorney, of counsel for complainants, in opposition thereto, it is by the Court ordered that thirty (30) days from this day, be and is assigned as the time within which complainants shall complete the taking of their evidence in support of the bill of complaint; that sixty (60) days thereafter, or in the event that complainant's evidence in support of the bill is closed before the expiration of thirty (30) days from this day, then that sixty (60) days from the receipt by defendants' solicitor of notice that the complainants' evidence in support of the bill is closed, be and is assigned as the time within which defendants shall take their evidence in defense, and that thirty (30) days thereafter, be and is assigned as the time within which the complainants shall take their evidence in reply; said evidence to be taken orally before E. H. Lamme, Esq., the Standing Examiner of this Court; and it is further ordered, that nothing herein shall affect the evidence heretofore taken in this cause.

At a stated term, to-wit, the January term, A. D. 1893, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, held at the court-room, in the City of Los Angeles, on Monday, the third day of July, in the year of our Lord one thousand and eight hundred and ninety-three:

Present: The Honorable ERSKINE M. ROSS, District Judge.

THE UNITED STATES OF AMERICA,
Complainants,
vs.
THE SOUTHERN PACIFIC RAILROAD
Co., ET AL.,
Defendants. } No. 184.

Upon application of Joseph H. Call, Esq., Special Assistant United States Attorney, and of counsel for complainants in open court, it is ordered that in taking testimony before the Master, said Joseph H. Call, Esq., Special Assistant United States Attorney, and of counsel for complainants, as aforesaid, may introduce and use in evidence any of the depositions or documentary evidence on file in this court in the cause entitled The United States of America, vs. The Southern Pacific Railroad Company, et al., No. 177; and upon making certified copies of such evidence, certified by the clerk of this court or by the Examiner or Master in Chancery, said original evidence shall be returned to the files of said cause, No. 177.

At a stated term, to-wit, the January term, A. D. 1893, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, held at the courtroom, in the City of Los Angeles, on Monday, the twenty-fourth day of July, in the year of our Lord one thousand eight hundred and ninety-three:

Present: The Honorable ERSKINE M. Ross, District Judge.

THE UNITED STATES OF AMERICA,
Complainants,
vs.
THE SOUTHERN PACIFIC RAILROAD
COMPANY, ET AL.,
Defendants. } No. 184.

On motion of J. H. Call, Esq., of counsel for complainant, it is ordered that each party may use in evidence all or any part of the record, including pleadings, process, orders and decrees of the Court, depositions and documentary evidence, in the cases of the United States vs. The Southern Pacific Railroad Company, et al., No. 177; United States vs. Southern Pacific Railroad Company, et al., No. 178, and United States vs. The Southern Pacific Railroad Company, et al., No. 68 (consolidated on the docket of this court), subject to objection of opposing counsel, and when introduced in evidence and identified by the Master or Examiner, the same shall be returned to its proper file of this court.

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*In the Circuit Court of the United States, of the Ninth
Judicial Circuit, in and for the Southern
District of California.*

THE UNITED STATES OF AMERICA,
Complainants, }

vs. } No. 184.

THE SOUTHERN PACIFIC RAILROAD
COMPANY, ET AL.,
Defendants. }

By consent of counsel for the respective parties to
said cause, and good cause appearing therefor,

It is ordered, that Stephen Potter, Esq., of San Francisco, California, be and he hereby is appointed a Special Examiner of this Court to take testimony on behalf of the defendants, at San Francisco, California, in the above-entitled action, and to report said testimony when so taken to this Court.

Dated at Los Angeles, California, September, 7th,
1893.

ROSS,
District Judge.

[Endorsed]: No. 184. U. S. Circuit Court, So.
Dist. of California. The United States of America,
Complainants, vs. The Southern Pacific Railroad
Company, et al., Defendants. Order Appointing
Stephen Potter a Special Examiner to take Testimony
on Behalf of Defendants. Filed Sept. 7, 1893. Wm.
M. Van Dyke, Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
Southern District of California.*

THE UNITED STATES OF AMERICA,
Complainant,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY, ET AL.,
Respondents. } No. 184.

Joseph H. Call, being first duly sworn, deposes and says: That he is Special Assistant Attorney for the United States in the above-entitled cause; that Robert Blickensderfer and Jacob Blickensderfer are material witnesses for the United States in the above-entitled cause, and your affiant, after investigating the matter, states upon his information and belief that said witnesses can testify that the Atlantic & Pacific Railroad Company surveyed and located a good and sufficient line of definite location of its road from the Colorado River to the Pacific Ocean, and filed a plat thereof in the office of the Secretary of the Interior.

Each of said witnesses resides and lives in the County of LaClede, State of Missouri, more than one hundred miles from the City of Los Angeles, and said Jacob Blickensderfer, as your affiant is informed and believes, is ancient and infirm, and can testify to matters concerning the survey and location of said line more fully than any other person, and, as your affiant is informed and believes, is a single witness to many matters connected with such location and survey.

WHEREFORE, your affiant requests the Court to appoint Charles C. Draper a Special Examiner, to take the testimony of the above-named witnesses on behalf of the United States.

JOSEPH H. CALL.

Subscribed and sworn to before me this 21st day of December, 1893.

(Seal)

WM. M. VAN DYKE,

Clerk U. S. Circuit Court.

Commissioner of U. S. Circuit Court, Southern
District of California.

[Endorsed]: No. 184. In the United States Circuit Court, Ninth Circuit, Southern District of California. United States of America, Complainant, vs. Southern Pacific R. R. Company, et al., Respondents. Affidavit. Joseph H. Call, Los Angeles, Cal., Attorney for Complainant. Filed Dec. 21, 1893. Wm. M. Van Dyke, Clerk.

At a stated term, to-wit, the August term, A. D. 1893, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, held at the court-room, in the City of Los Angeles, on Thursday, the twenty-first day of December, in the year of our Lord one thousand eight hundred and ninety-three:

Present: The Honorable ERSKINE M. ROSS, District Judge.

THE UNITED STATES OF AMERICA,
Complainants, }
vs.
THE SOUTHERN PACIFIC RAILROAD } No. 184.
COMPANY, ET AL.,
Defendants.

On reading and filing the affidavit of Joseph H. Call Esq., Special Assistant United States Attorney for the Southern District of California, of counsel for complainants, from which affidavit it appears that Robert Blickensderfer and Jacob Blickensderfer are material witnesses for the United States in the above entitled cause, that each of said witnesses resides and lives in the County of Laclede, State of Missouri, more than one hundred miles from the City of Los Angeles, and that said Jacob Blickensderfer is ancient and infirm, and on motion of said Joseph H. Call, Esq., of counsel as aforesaid, Joseph D. Redding, Esq., of counsel for defendants, being present and consenting thereto, and good cause therefor appearing, it is ordered that Charles C. Draper be and he hereby is appointed a

Special Examiner of this Court to take the testimony of said Robert Blickensderfer and Jacob Blickensderfer, witnesses for the United States in said cause, in the County of Laclede, State of Missouri.

At a stated term, to-wit, the January term, A. D. 1894 of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, held at the court-room, in the City of Los Angeles, on Tuesday, the twentieth day of February, in the year of our Lord one thousand eight hundred and ninety-four:

Present: The Honorable ERSKINE M. ROSS, District Judge.

THE UNITED STATES OF AMERICA,
Complainants, }
vs.
THE SOUTHERN PACIFIC RAILROAD
COMPANY, ET AL., } No. 184.
Defendants.

Now come George J. Denis, Esq., United States Attorney for the Southern District of California, and Joseph H. Call, Esq., Special Assistant United States Attorney for the Southern District of California, of counsel for complainants, and announce to the Court that complainants have concluded the taking of their testimony in said cause, whereupon, on motion of said counsel for complainants, it is ordered that such announcement be and the same is hereby entered of record, and it is further ordered that E. H. Lamme, Esq., the Standing Master and Examiner in Chancery of this Court, be and he is hereby ordered forthwith

to report to the Court all the testimony and evidence taken in said cause before him as such Examiner.

At a stated term, to-wit, the January term, A. D. 1894, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, held at the court-room, in the City of Los Angeles, on Friday, the second day of March, in the year of our Lord one thousand eight hundred and ninety-four:

Present: The Honorable ERSKINE M. ROSS, District Judge.

THE UNITED STATES OF AMERICA,

Complainants,

vs.

THE SOUTHERN PACIFIC RAILROAD
COMPANY, ET AL.,

No. 184.

Defendants.

This cause coming on this day to be further heard on defendants, motion for an order granting said defendants further time to take testimony, George J. Denis, Esq., United States Attorney for the Southern District of California, and Joseph H. Call, Esq., Special Assistant United States Attorney for the Southern District of California, appearing as counsel for the complainants, and Joseph D. Redding, Esq., and J. D. Bicknell, Esq., appearing as counsel for defendants, and said motion having been argued by counsel for the respective parties, it is now ordered that thirty (30) days further time from and after this date be and the same hereby is granted within which either side may take testi-

mony in respect to an alteration in a certain letter of date of March 9th, 1872, from Secretary of the Interior C. Delano to Hon. Willis Drummond, Commissioner of the General Land Office, and in respect to the true reading of the context thereof.

At a stated term, to-wit, the January term, A. D. 1894, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, held at the courtroom, in the City of Los Angeles, on Thursday, the fifth day of April, in the year of our Lord one thousand eight hundred and ninety-four:

Present: The Honorable ERSKINE M. ROSS, District Judge.

THE UNITED STATES OF AMERICA,
Complainants, }
vs.
THE SOUTHERN PACIFIC RAILROAD }
COMPANY, ET AL., Defendants.

No. 184.

On motion of Joseph H. Call, Esq., Special Assistant United States Attorney for the Southern District of California, of counsel for complainants, defendants appearing and consenting by Walter J. Trask, Esq., it is ordered that the reports of E. H. Lamme, Esq., late Standing Master and Examiner in Chancery of this Court, and the depositions of Wm. J. McGee, Silas W. Lamoreaux and Edgar T. Massey, taken before George W. Drew, at Washington, D. C., on behalf of complainants, be opened and published.

*In the Circuit Court of the United States, Ninth Circuit,
Southern District of California.*

UNITED STATES OF AMERICA,
Complainant, }
vs. } No. 184.
SOUTHERN PACIFIC RAILROAD COMPANY, ET AL., }
Defendants.

To Joseph D. Redding, J. D. Bicknell and W. J. Trask,
D. L. Russell, and W. F. Herrin, attorneys and
solicitors for the defendant in the above entitled
cause:

Please take notice, that the complainant herein will
take the testimony of Edgar F. Massey, William J.
Magee, M. Cooper Pope, Alice S. Hill, Samuel S.
Marr, and others, each and all of whom reside and
live more than one hundred miles from the place of
trial herein, and more than one hundred miles from
any place at which the Circuit Court of the United
States for the Ninth Circuit, Southern District of California,
is appointed to be held by law, to-wit: at Wash-
ington, D. C., for the use herein on behalf of the
complainants, before George W. Drew, a notary public
in and for the District of Columbia, who is not attor-
ney nor of counsel, nor interested in this case, at his
office, at 1324 F street, Northwest Washington, in said
District of Columbia, commencing at the hour of 10
o'clock A. M. on the 24th day of March, A. D. 1894, and
thereafter from day to day as the taking of the depo-

sitions may be adjourned, and at such places as said notary may determine to adjourn said taking of testimony, and such testimony will be so taken in accordance with the provisions of Sections 863, 864 and 865 of the Revised Statutes of the United States, and the Equity rules.

GEORGE J. DENIS,
United States Attorney.

JOSEPH H. CALL,
Special Asst. U. S. Atty.

Dated March 15, A. D. 1894.

[Endorsed]: No. 184. Circuit Court, 9th Circuit, Southern District, State of California. United States of America, Plaintiff, vs. Southern Pacific Railroad Company, et al., Defendants. Notice of Taking Testimony. Received copy of the within this 15 day of March, 1894. J. D. Redding, by Bicknell & Trask, & Bicknell & Trask, Attorneys for Defendants. George J. Denis, U. S. Atty., Los Angeles, Cal. Filed Apr. 14, 1894. Wm. M. Van Dyke, Clerk.

At a stated term, to-wit, the January term, A. D. 1894, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, held at the court-room, in the City of Los Angeles, on Monday, the seventh day of May, in the year of our Lord one thousand eight hundred and ninety-four:

Present: The Honorable ERSKINE M. Ross, District Judge.

THE UNITED STATES OF AMERICA,
Complainants,
vs.
THE SOUTHERN PACIFIC RAILROAD
COMPANY, ET AL.,
Defendants. } No. 184.

This cause coming on this day for final hearing and argument before the Court, George J. Denis, Esq., United States Attorney for the Southern District of California, and Joseph H. Call, Esq., Special Assistant United States Attorney for the Southern District of California, appearing as counsel for complainants, and Joseph D. Redding, Esq., and L. E. Payson, Esq., appearing as counsel for defendants, and on motion of Joseph D. Redding, Esq., of counsel for defendants, as aforesaid, the testimony taken in said cause having been published, and on motion of Joseph H. Call, Esq., of counsel as aforesaid, the deposition of William A. Hayes, and Harrison W. Gardiner, taken before Asa P. French, at Boston, Massachusetts, having been opened and published, and on motion of Joseph D. Redding, Esq., of counsel as aforesaid, defendants' motion to suppress certain testimony and the objections of defendants to certain testimony having been filed herein, and a certain certified copy of a map, entitled "Part of S. W. California Atlas, Sheet 73 C. U. S. Geographical Surveys West of the 100 Meridian," having been offered on behalf of defendants and filed in evidence in said cause, and said cause having thereupon been argued by Joseph

H. Call, Esq., of counsel as aforesaid, on behalf of complainants, and thereupon, at the hour of 12:30 o'clock P. M., court having taken a recess until the hour of two o'clock P. M., of this day—and now, at the hour of two o'clock P. M., court having reconvened—and said cause having been further argued by Joseph H. Call, Esq., of counsel as aforesaid, on behalf of complainant, and having been argued by Joseph D. Redding, Esq., of counsel as aforesaid, on behalf of defendants, now, at the hour of 4:45 o'clock P. M., it is ordered that said cause be and the same hereby is continued for further hearing and argument until Tuesday the 8th day of May, 1894, at the hour of 10:30 o'clock A. M.

In the United States Circuit Court, Southern District of California, Ninth Circuit.

THE UNITED STATES,
Plaintiff,
vs.
SOUTHERN PACIFIC RAILROAD CO.,
AND OTHERS,
Defendants.

Motion to Suppress Certain of the Testimony and Documentary Evidence Introduced by the Plaintiff in this Action.

In conformity with notice heretofore given at the time, that certain evidence was introduced in this action by the plaintiff, and in conformity with the rules of practice prevailing in this court, and in conformity to notice heretofore given in open court, the

defendants now ask that certain portions of the evidence in this case introduced by the plaintiff be suppressed and expunged from record, on the ground of the same being an impertinence therein, which evidence is herein referred to and set forth by reference to the time and place of the offering of the same, and as follows:

1. All that testimony taken by the plaintiff in Washington, D. C., on January 18th, 1894, in the office of the Commissioners of the General Land Office, before George W. Drew, Notary Public, and in reference to the maps filed by the Texas Pacific Railroad Co.

And the defendants herewith reiterate and repeat at this point the said testimony from record in this cause, commencing at second question on page 3, of the record of said proceedings, and ending at the words "Notary Public" on page 6, line 18, of said page.

2. Testimony offered by plaintiff on February 12th, 1894, *in rebuttal* before E. H. Lamme, at Los Angeles, California, embraced between line 26, page 296, to and including line 18, page 308; also commencing on line 17, page 311, of said proceedings to and including line 14, page 317.

It is moved to suppress those portions of the certificate attached to Master's Exhibit No. 9, introduced by the plaintiff in this case before the Master, which portions read: "That the annexed copies of two maps showing the line or route of the Atlantic & Pacific Railroad as definitely fixed from San Miguel Mission to a point on the line between Los Angeles and Santa Barbara counties from a point in Township 7 North,

Range 7 East, S. B. M., to the Colorado River" and ask that the same be expunged from the record of this cause as not being in conformity with the provisions of the revised statutes authorizing and instructing the officers of the interior department how and in what manner to certify documents in their custody, and furthermore, that the same is an impertinence in this record and should be suppressed, for the reason that the officers of the Interior Department making such certificate have and had no authority to define, declare, describe or draw any legal conclusion of their own as to the character and import of any document exemplified and certified by them, and because the same as it now reads should be suppressed, for the reason that these words tend to confuse this Court in properly and correctly ascertaining the true character of the said maps.

The defendants move to suppress those portions of the certificate attached to the Examiner's Exhibit No. 10, which read: "That the annexed copy is a true and literal exemplification of the map of definite location of the Atlantic and Pacific Railroad from a point on the western boundary of Los Angeles county, California, to a point in Township 7, Range 7 East, San Bernardino Base and Meridian, under the Act of July 27, 1866," on the same grounds and for the same reasons.

Defendants also move to suppress those portions of the certificate attached to Master's and Examiner's Exhibit No. 11, introduced by the plaintiff, which portions read: "That the annexed copy is a true and

literal exemplification of the map of definite location of the Atlantic & Pacific Railroad from San Francisco to San Miguel Mission, California, under the Act of July 27, 1866," on the same grounds and for the same reasons.

Defendants also move to suppress and strike from file those portions of the certificates hereinafter mentioned, which are attached to "Examiner's Exhibit No. 12, Examiner's Exhibit No. 13, Examiner's Exhibit No. 14, Examiner's Exhibit No. 15, Examiner's Exhibit No. 16, Examiner's Exhibit No. 17, Examiner's Exhibit No. 18, Examiner's Exhibit No. 19, Examiner's Exhibit No. 20, Examiner's Exhibit No. 21, Examiner's Exhibit No. 22, Examiner's Exhibit No. 23, Examiner's Exhibit No. 24, Examiner's Exhibit No. 25, Examiner's Exhibit No. 26, Examiner's Exhibit No. 27, Examiner's Exhibit No. 28, Examiner's Exhibit No. 29", which portions of said certificates in anywise recite or attempt to declare or define the character of the exhibits offered, otherwise than is prescribed by the provisions of the revised statutes of the United States for said certificates.

It is also moved to suppress all the testimony offered on the 18th day of July, 1893, in Los Angeles, before E. H. Lamme, as follows:—"The amended bill of Complaint; the answer of the Southern Pacific Railroad Company; the replication of the complainant and mandate of the United States Supreme Court; and the final decree of the United States Circuit Court for the Southern District of California—
"in the case of

UNITED STATES vs. SOUTHERN PACIFIC R. R. COMPANY
and others, Nos. 67-68-69, Consolidated,
and marked when introduced as Examiner's Exhibit
No. 31, on the ground that the same is an imper-
tinence in the record of this cause and should be
expunged; therefore, that the introduction of said
exhibit and the testimony therein taken was duly
objected to by the defendants as being without the
issues of this case, No. 184, incompetent, irrelevant
and immaterial, and upon the further ground that
there was no oral testimony offered to explain the
record, and for the same reason defendants move to
suppress and expunge from the record Examiner's
Exhibit No. 32, being the amended bill of complaint,
the answer, the replication and the mandate in the
suit of

UNITED STATES vs. SOUTHERN PACIFIC R. R. COMPANY
and others, No. 177,

for the same reason.

Defendants move to suppress and expunge from the
record Examiner's Exhibit No. 33, also Examiner's
Exhibit No. 34, also Examiner's Exhibit No. 35, also
Examiner's Exhibit No. 36, also Examiner's Exhibit
No. 37.

Defendants submit that each and all of the said
Examiner's Exhibits, from No. 31 to and including No.
37, and the material therein contained, are not in
issue in this cause, and therefore constitute an imper-
tinence, and that the same result in filling the record
in this cause with long recitals and long digressions
of matters of fact, which are altogether unnecessary

and totally immaterial to the matters and issues in question.

And the defendants pray that this Court will make the necessary order suppressing those portions of the certificates attached to Master's Exhibits 9, 10 and 11, heretofore specified, and also suppressing and expunging from the record of this case the records and proceedings taken in other suits, heretofore and herein set forth and referred to in detail, and also that the other motions heretofore made and constituting a part of this cause may be granted.

JOSEPH D. REDDING,
Solicitor for Defendants.

May 7, 1894.

[Endorsed]: 184. In the U. S. Circuit Court, Ninth Circuit, Southern District of California. The United States, Plaintiff, vs. S. P. R. R. Co. and others, Defendants. Motion to Suppress Certain Testimony. Filed May 7, 1894. Wm. M. Van Dyke, Clerk.

At a stated term, to wit, the January term, A. D. 1894, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, held at the courtroom, in the City of Los Angeles, on Tuesday, the eighth day of May, in the year of our Lord one thousand eight hundred and ninety-four:

Present:—The Honorable ERSKINE M. Ross,
District Judge.

THE UNITED STATES OF AMERICA,
Complainants, }
vs. } No. 184.
THE SOUTHERN PACIFIC RAILROAD }
COMPANY, ET AL.,
Defendants.

This cause coming on this day for further argument before the Court, George J. Denis, Esq., United States Attorney for the Southern District of California, and Joseph H. Call, Esq., Special Assistant United States Attorney for the Southern District of California, appearing as counsel for complainants, and L. E. Payson, Esq., and Joseph D. Redding, Esq., appearing as counsel for defendants, and said cause having further been argued by Joseph D. Redding, Esq., of counsel as aforesaid, on behalf of the defendants, and on motion of defendants, complainants, by counsel objecting thereto, John W. Parker, having been called and sworn as a witness on behalf of defendants, and having given his testimony, and defendants having offered in evidence a certain map entitled "Part of S. W. California Atlas Sheet, 73 C. U. S. Geographical Surveys West of the 100th Meridian," with a line in red ink traced upon it by witness; also, a certain tracing, which are duly admitted and filed in evidence, and marked Defendant's Exhibits 134 and 135 respectively, and said cause having been further argued on behalf of defendants by Joseph D. Redding, Esq., of counsel as aforesaid, and court thereupon, at the hour of 12:30 o'clock p. m., having taken a recess until the hour of 2:00 o'clock p. m.—and now at the hour of 2:00 o'clock p. m., court having reconvened,

and said cause having been further argued by Joseph D. Redding, Esq., of counsel as aforesaid, on behalf of defendants, and by L. E. Payson, Esq., of counsel as aforesaid, in behalf of defendants, now, at the hour of 4:30 o'clock p. m. it is ordered that said cause be and the same hereby is continued for further hearing and argument until 10:30 o'clock a. m. of Wednesday, the 9th day of May, 1894.

At a stated term, to wit, the January term, A. D. 1894, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, held at the court-room, in the City of Los Angeles, on Wednesday, the ninth day of May, in the year of our Lord one thousand eight hundred and ninety-four:

Present: The Honorable ERSKINE M. Ross, District Judge.

THE UNITED STATES OF AMERICA,
Complainants, }
vs.
THE SOUTHERN PACIFIC RAILROAD
COMPANY, ET AL., }
Defendants.

No. 184.

This cause coming on this day for further argument before the Court, George J. Dennis, Esq., United States Attorney for the Southern District of California, and Joseph H. Call, Esq., Special Assistant United States Attorney for the Southern District of California, appearing as counsel for complainants, and L. E. Payson, Esq., and Joseph D. Redding, Esq., appearing

as counsel for defendants, and D. L. Russell, Esq., appearing as counsel for defendant, the Executors of the Estate of Miguel Leonis, deceased, and said cause having been further argued on behalf of defendants by L. E. Payson, Esq., and D. L. Russell, Esq., of counsel, as aforesaid, and on behalf of complainants in reply by Joseph H. Call, Esq., of counsel as aforesaid, it is now ordered, that said cause be and the same hereby is submitted to the Court for its consideration and decision upon said argument and upon briefs to be filed by the respective parties as follows, on behalf of complainants within ten (10) days, and on behalf of defendants within twenty (20) days after the service upon them of complainant's brief.

*In the Circuit Court of the United States, of the Ninth
Judicial Circuit, in and for the Southern
District of California.*

THE UNITED STATES OF AMERICA,
Complainants, }
vs.
THE SOUTHERN PACIFIC RAILROAD } No. 184.
COMPANY, ET AL.,
Defendants.

By consent of counsel for the respective parties to said cause, and good cause appearing therefor,

It is ordered, that Stephen Potter, Esq., of San Francisco, California, be and he hereby is appointed a Special Examiner of this Court to take testimony on behalf of the defendants, at San Francisco, California,

in the above-entitled action, and to report said testimony when so taken to this Court.

Dated at Los Angeles, California, September 7th, 1893.

ROSS,
District Judge.

[Endorsed]: No. 184. U. S. Circuit Court, So. Dist. of California. The United States of America, Complainants, vs. the Southern Pacific Railroad Company, et al., Defendants. Order appointing Stephen Potter a Special Examiner to take testimony on behalf of Defendants. Filed Sep. 7, '93. Wm. M. Van Dyke, Clerk.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States, for the Southern District of California, do hereby certify the foregoing to be a full, true and correct copy of an original order filed and entered by said Court September 7th, 1893, in the cause entitled The United States of America, Complainants, vs. The Southern Pacific Railroad Company, et al., Defendants, No. 184, as the same remains on file and of record therein.

Attest my hand and the seal of said Circuit Court, this 7th day of September, A. D. 1893.

(Seal) WM. M. VAN DYKE,
Clerk.

[Endorsed]: No. 184. U. S. Circuit Court, Ninth Circuit, Southern District of California. The United States of America vs. The Southern Pacific Railroad Company, et al. Certified Copy of Order Appointing Stephen Potter a Special Examiner, etc.

*In the Circuit Court of the United States, Ninth Circuit,
Southern District of California.*

UNITED STATES OF AMERICA,
Complainant,
vs.
SOUTHERN PACIFIC RAILROAD COM- }
PANY, ET AL., }
Respondents. } No. 184.

Stipulation.

WHEREAS, In the above-entitled action, Judge E. M. Ross has issued an order appointing Stephen Potter, of the Mills Building, San Francisco, as Special Examiner to take the testimony of the defendants in the above entitled action in San Francisco, which order was granted at the request of the solicitors for the complaint and defendants;

Now, THEREFORE, it is stipulated by and between the solicitors for the complainant and defendants, and by and between the parties to this action, that the testimony of the defendants, when taken before said Stephen Potter, in San Francisco, in the above-entitled action, commencing Sept. 8th, at 11 a. m., and continuing from day to day, and reduced by him as a stenographer to typewriting, and when signed by the respective witnesses giving said testimony, that the same shall be deemed to have been taken with the full force and same effect as if before the Regular Examiner of this Court, and to which this case has been referred, and all formalities as to the time and notice of taking said testimony, are

hereby waived. And furthermore, the said Stephen Potter is hereby requested, when said testimony is taken and finished of the defendants, in San Francisco, that he certify to the same and forward the same to the said Circuit Court of the United States, Ninth Circuit, Southern District of California, Los Angeles.

JOSEPH H. CALL,

Spl. Asst. U. S. Atty., Solicitor for Complainant.

JOSEPH D. REDDING,

Solicitor for Respondents.

Dated September 8th, 1893.

[Endorsed]: No. 184. Circuit Court of the United States, Ninth Circuit. So. District of California. United States vs. S. P. R. R. Co. Stipulation. Filed Sept. 8th 1893, with the Special Examiner, Stephen Potter, Special Examiner. Joseph D. Redding, Solicitor for Respdts., 33 Chronicle Building, San Francisco, Cal.

In the United States Circuit Court, Ninth Circuit, Southern District of California.

UNITED STATES OF AMERICA,
Complainant, }
vs. } No. 184.
SOUTHERN PACIFIC RAILROAD COMPANY, ET AL., } In Equity.
Defendants.

BE IT REMEMBERED, that on the 8th day of September, A. D. 1893, and on the several days thereafter to which the examination was regularly adjourned, as hereinafter set forth, at room 41 of the offices of the Southern Pacific Railroad Company, at the corner of Fourth and Townsend streets, in the City and County of San Francisco, State of California, before me, Stephen Potter, Special Examiner in Chancery of the Circuit Court of the United States for the Ninth Circuit and Southern District of California, personally appeared the several witnesses, whose names are hereinafter set forth, who were produced and examined on behalf of the defendants in the above-entitled cause.

JOSEPH H. CALL, ESQ.,
Appeared as Counsel on behalf of Complainant, and

JOSEPH D. REDDING, ESQ.,
As Counsel on behalf of Defendants.

Following is a record of the proceedings:

*In the Circuit Court of the United States, Ninth Circuit,
Southern District of California.*

UNITED STATES OF AMERICA,

Complainant,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY, ET AL.,

Defendants.

No. 184.
In Equity.

Testimony Taken on Behalf of Defendants in San Francisco, Commencing September 8th, 1893, Before Stephen Potter, Esq., Special Examiner Appointed by Order of the Court, September 7th, 1893, and in pursuance of a Stipulation Hereto Attached.

San Francisco, September 8th, 1893.

(Jerome Madden was called as a witness on behalf of the defendants, but was temporarily withdrawn at this time in order to take the testimony of Clarence T. Cleve, Peter Hamilton, Mrs. Thomas Allison, William Ferguson, James Hamilton, Alexander Cook, and Ira H. Bradshaw. The testimony of Mr. Madden was then resumed, and his testimony has all been placed together in this record for convenience in signing and reference, commencing at page)

Testimony of Clarence T. Cleve:

Clarence T. Cleve, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. Redding—Q. Are you one of the defendants in this suit? A. I believe so.

Q. What is your occupation?

A. I am a mechanic.

Q. Do you hold a deed from the Southern Pacific Railroad Company to yourself for any of the land involved in this case?

Mr. Call—We object as incompetent, immaterial and irrelevant. A. I do. (Producing.)

Mr. Redding—The defendant now offers in evidence the original deed No. 5880 of the Southern Pacific Railroad Co., D. O. Mills and Gerrit L. Lansing, Trustees, to Clarence T. Cleve, dated August 12th, 1890.

(The admission of the deed in evidence is objected to by Mr. Call as incompetent, immaterial and irrelevant.)

Mr. Redding—Mr. Call, I will offer this, and if you will allow me, have the Special Examiner copy it himself, and then return me the original, because Mr. Cleve, of course, wants his original document.

Mr. Call—I have no objection to the original being withdrawn upon a copy being made and certified by the Special Examiner.

Mr. Redding—Q. The land involved and mentioned in this deed is: The northwest quarter (N. W. $\frac{1}{4}$) of Section number Fifteen, in Township Five north of Range Eleven West, San Bernardino Base and Meridian, containing one hundred and sixty acres; how much money did you pay to the Southern Pacific Railroad Company for this land, and for this deed?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. Four hundred dollars.

Mr. Redding—We offer this in evidence as Defendants' Exhibit before the Special Examiner, No. 3.

(The deed No. 5,880 of the Southern Pacific Railroad Co., D. O. Mills and Gerrit L. Lansing, Trustees, to Clarence T. Cleve, dated August 12th, 1890, is marked by the Special Examiner "Defendants' Exhibit before the Special Examiner, No. 3," and a certified copy thereof is annexed hereto.)

Q. Did you buy this land in good faith?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. I did.

Q. Did you have any notice from any source of any controversy between the Government and the Southern Pacific Railroad Company in reference to the title of this land?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. I did not.

Q. Have you been in quiet and peaceful possession since your purchase?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. I have.

Q. Where did you pay the sum of four hundred dollars for this land to the defendant, the Southern Pacific Railroad Company?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. In the land office of the Southern Pacific Railroad Company, in this building.

Q. Have you paid all of the taxes—State, county and municipal—which have been levied and assessed upon this land since your purchase?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. I have.

Q. Are you holding this land now as a *bona fide* purchaser in good faith, and without notice?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and as being a conclusion of law.)

A. I have.

CROSS-EXAMINATION.

Mr. Call—Q. What year did you say you bought this land in from the Railroad Company?

A. The deed is dated in 1890, I believe; I contracted to buy it in 1887.

Q. At the time you bought it, did you understand that the Railroad Company held this land under a grant by Congress? A. I did—yes, sir.

Q. You were aware that they had a grant from Congress?

Mr. Redding—That is objected to as not proper cross-examination, and as incompetent, immaterial and irrelevant.

A. I suppose so.

Mr. Call—Q. Did you ever examine that grant?

A. I did not.

Q. Do you know what year that grant was made in? A. I do not.

Mr. Redding—This is all subject to the same objection as not proper cross-examination, and as incompetent, immaterial and irrelevant.

Q. Do you know, or did you know then, the terms and conditions of that grant?

(Question objected to by Mr. Redding as not proper cross-examination, and as incompetent, immaterial and irrelevant.)

A. I cannot say that I did.

Q. You did not know then, that there was a condition in that grant that lands reserved by the United States for any purposes or previously granted, or otherwise claimed, were not included in the grant to the Railroad Company?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and as not proper cross-examination.)

A. I did not.

Q. Did you examine the records of the United States Land Office before you purchased?

(Question objected to by Mr. Redding as not proper cross-examination, and as immaterial, incompetent and irrelevant.)

A. I did not.

Q. Neither the local office nor the General Land Office at Washington?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and as not proper cross-examination.)

A. Neither.

Q. Did you examine the records of the Secretary of State of this State before you purchased?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and as not proper cross-examination.)

A. I did not.

Q. Did you know that the Southern Pacific Railroad Company that received a Congressional grant referred to was dissolved as a corporation before you purchased?

(Question objected to by Mr. Redding as not proper cross-examination, and as incompetent, immaterial and irrelevant, and as calling for a conclusion of the witness.)

A. No, I cannot say that I did.

RE-DIRECT EXAMINATION.

Mr. Redding—Q. You bought this land in good faith, did you?

(Question objected to by Mr. Call as being incompetent, immaterial and irrelevant, and as being a conclusion of law, and leading.)

A. I did; yes, sir.

Q. And being in the belief that the Southern Pacific Railroad Company owned this land and held the title in fee?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, calling for a conclusion of law, and leading.)

A. Yes, sir.

Q. Did the Southern Pacific Railroad Company, through its Land Agent, represent to you that it owned the land that it offered to sell you?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and calling for a conclusion, and leading.)

A. They represented to me that they had a legal right to sell those lands.

Q. That they held the title?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and calling for a conclusion, and leading.)

A. That they held the title.

Q. Did you purchase the lands believing in their representations?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and calling for a conclusion, and leading.)

A. I did—yes, sir; and no other representations.

CLARENCE T. CLEVE.

Testimony of Peter Hamilton:

Peter Hamilton, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

DIRECT-EXAMINATION.

Mr. Redding—Q. Where do you reside?

See p. 722. A. At Rio Vista, Solano County.

Q. Have you a deed from the Southern Pacific Railroad Company, one of the defendants in this suit, for a portion of any of the lands in evidence?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. I have. (Producing.)

Mr. Redding—The defendants offer in evidence Deed No. 3057, Southern Pacific Railroad Co., D. O. Mills and Gerrit L. Lansing, Trustees, to Peter Hamilton and Mrs. Thomas Allison, of all of Section 35, in Township 7, north of Range 13 west, San Bernardino Base and Meridian, containing 640 acres. This is similar in form to the last deed.

Mr. Call—We object to the admission of the deed as incompetent, immaterial and irrelevant.

(Deed No. 3057, Southern Pacific Railroad Co., D. O. Mills and Gerrit L. Lansing, Trustees, to Peter Hamilton and Mrs. Thomas Allison, dated January 18th, 1889, is marked by the Special Examiner "Defendants' Exhibit before the Special Examiner, No. 4," and a certified copy thereof is annexed hereto, it being agreed between counsel that such certified copy may be made by the Special Examiner and annexed hereto, and the original deed returned to the witness).

Mr. Redding—Q. How much money did you and Mrs. Allison pay for this land in this deed?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant).

A. \$1600.

Q. To whom did you pay it?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant).

A. To the Southern Pacific Railroad Company.

Q. To the Land Agent?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant).

A. To the Land Agent in this building.

Q. Have you been in quiet and peaceful possession of the land ever since your purchase?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant).

A. I have.

Q. Did you pay this money in good faith?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant).

A. I did.

Q. Have you and Mrs. Allison paid all of the taxes, State, county and municipal, which have been levied and assessed on these lands since your purchase?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. I believe we have; I know I have, and she owns the other half section; we own the section together.

Q. Have your interests been divided, or are they undivided?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. They are undivided—that is, they are divided among ourselves; but we had to receive the section together.

Q. You have not made any deed among yourselves?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. No, sir.

Q. Did you purchase this land without notice of any controversy between the Government of the United States and the Southern Pacific Railroad Company, one of the defendants herein?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant,) and the further ground that the question is leading and involves a conclusion of law.

A. I did.

Q. Did you believe in good faith that the Southern Pacific Railroad Company was the owner of this land when it sold it to you?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. I certainly did.

Q. Were you a *bona fide* purchaser for value received without notice of the land involved?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and as involving a conclusion of law, and not the best evidence.)

A. I was.

CROSS-EXAMINATION.

Mr. Call—Q. When did you buy this land from the Company?

A. The contract was made in either 1884 or 1885, February; I think it was 1884, but it might be 1885; I don't remember whether it was four years we had time to pay it in; it was either February, 1884, or 1885.

Q. Have you a copy of the contract?

A. I have not; I delivered my contract up when I received the deed.

Q. The contract was merged into the deed?

A. Yes, sir; I gave up my receipts and contract, if I remember right, when I received the deed.

Q. Did you suppose when you bought this land, or contracted to buy it, that the Railroad Company held this under a grant of Congress?

A. I understood that way—that they were to receive a patent for that land under a grant from Congress.

Q. Did you ever read the grant of Congress?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross-examination.)

A. I did not.

Q. This deed refers to a certain mortgage made by the Railroad Company to D. O. Mills and Gerrit L. Lansing, Trustees, the deed from the Railroad Company to yourself; did you ever examine that mortgage or deed of trust referred to in this suit?

(Question objected to by Mr. Redding as incompetent; immaterial and irrelevant, and as not proper cross-examination.)

A. No, sir.

Q. You say you never examined the Act of Congress under which this is claimed?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross-examination.)

A. No, sir; I have not.

Q. You are not aware, then, that lands which had been previously granted by Congress, or reserved for any purpose, or otherwise claimed, were not included in the grant to the Railroad Company?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, not proper cross-examination, and furthermore, that it is calling for a legal conclusion from the witness).

A. I was not aware of anything but that the Railroad Company was to receive a patent for that land; I distinctly understood that they were to receive a patent for it, and when they received a patent for it I was to receive a deed.

Q. What was the source of your information in that respect?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross-examination.)

A. Our land was purchased from M. L. Wicks, of Los Angeles, and I considered that his judgment was satisfactory evidence that the Railroad Company would receive them.

Q. You bought of M. L. Wicks?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross-examination.)

A. Through M. L. Wicks from the Railroad Company; he bought direct from the Railroad Company; he done the original transaction for us.

Q. Wicks had a contract from the Railroad Company originally for this land?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and as not proper cross-examination.)

A. Yes, sir, and the Railroad Company accepted us in place of M. L. Wicks.

Q. Then you really bought of Wicks?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and as not proper cross-examination.)

A. I understood we were buying off the Railroad Company.

Q. You bought the contracts which Wicks held, then?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and as not proper cross-examination.)

A. We understood it was railroad land; I cannot answer that question; I understood we were buying off the Railroad Company lands through M. L. Wicks as agent or attorney.

Q. You said that Wicks had a contract for this land from the Railroad Company?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and as not proper cross-examination.)

A. I do not know that he had a contract; he could receive a contract at any time; I understood if I went to purchase a piece of land from the Railroad Company, to buy off him, he could receive a contract and assign it over to me, and they accept me in place of Wicks.

Q. That is what you did, then?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and as not proper cross-examination.)

A. That is what we did.

Q. Then the contract was originally made with Wicks?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and as not proper cross-examination.)

A. Yes, sir; that way.

Q. Do you know what Wicks' information was in regard to the validity of the Railroad Company's claim to this lands?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, not proper cross-examination, and calling for hearsay evidence.)

A. I do not; I suppose that his information was correct.

Q. Did you or did you not know anything about what his information was?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross-examination.)

A. I had only my own judgment, believing his information was correct.

Q. You did not really know the facts about it, then?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross-examination.)

A. I suppose I did through him.

Q. Did you know that a grant had been made by Congress to the Atlantic and Pacific Railroad Company at the time or before you contracted to buy this land?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross-examination).

A. I did not.

Q. You never examined the public laws of the United States, then, in that respect?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross-examination).

A. No, sir.

Q. Did you know at the time you purchased this land that this land was withdrawn for the Atlantic and Pacific Railroad Company?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, not proper cross-examination, calling for a legal conclusion and misleading).

A. I distinctly understood I was buying this land from the Southern Pacific Railroad Company, believing they were to receive a patent for it; that is all I knew.

Q. I wish to know from the witness whether he knew that this land had been withdrawn for the Atlantic and Pacific Railroad Company?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, not proper cross-examination, and calling for a conclusion).

A. I did not.

RE-DIRECT EXAMINATION.

Mr. Redding—Q. Did the Southern Pacific Railroad Company through its Land Agent, represent to you that it owned the land that it offered to sell to you?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant,) and calling for a conclusion,) and leading.)

A. They represented to me that they held a legal right to sell those lands.

Q. That they held the title?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, as leading, and calling for a conclusion.)

A. That they held the title.

Q. Did you purchase the lands believing in their representations?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, as leading and calling for a conclusion.)

A. I did, yes, sir; and no other representations.

PETER HAMILTON.

Testimony of Mrs. Thomas Allison:

(A witness called on behalf of defendant.)

(It is agreed and stipulated between counsel that Mrs. Thomas Allison would testify, if called upon the stand, to the same effect as the last witness, Peter Hamilton, she being a part owner with Hamilton under the deed of January 18th, 1889, referred to by the witness Hamilton, and marked in this matter "Defendants' Exhibit before the Special Examiner, No. 4," and that the direct-examination, cross-examination, and re-direct examination of the witness Peter Hamilton, as appears herein, may stand as the testimony of Mrs. Thomas Allison, and is deemed in evidence for all intents and purposes, subject to the same objections as interposed by either counsel.)

Testimony of William Ferguson:

William Ferguson, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

DIRECT-EXAMINATION.

Mr. Redding—Q. Are you the holder and purchaser of any land from one of the defendants here-

in, namely, the Southern Pacific Railroad Company, which is involved in this suit?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. I am.

Q. Will you produce your deed, please?

(Witness produces deed.)

Mr. Redding—The defendants offer in evidence a deed from the Southern Pacific Railroad Co., D. O. Mills and Gerrit L. Lansing, Trustees, No. 3,053, to William Ferguson and James Hamilton, for the following land: All of Section No. 27, in Township 7, North of Range 13 West, San Bernardino Base and Meridian, containing 640 acres.

(The admission of the deed in evidence is objected to by Mr. Call as incompetent, immaterial and irrelevant.)

(Deed No. 3,053, Southern Pacific Railroad Co., D. O. Mills and Gerrit L. Lansing, Trustees, to William Ferguson and James Hamilton, dated January 18th, 1889, is marked by the Special Examiner "Defendants' Exhibit before the Special Examiner, No. 5," and a certified copy thereof is annexed hereto, it being agreed between counsel that such certified copy may be made by the Special Examiner and annexed hereto, and the original deed returned to the witness.)

Q. How much money did you and Mr. James Hamilton pay for this land?

(Question objected to by Mr. Call as immaterial, incompetent and irrelevant.)

A. \$1600 was the principal, and we paid interest beside; we bought the land on time.

Q. When you got your deed, which is now offered in evidence, you paid how much as the purchase price independent of anything else?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. \$1600.

Q. Where did you pay this money?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. We paid it in the office of the Land Agent, Mr. Madden.

Q. Was it United States coin?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. Principally United States coin; I think I gave Mr. Madden once a check, which was equivalent to coin, to be drawn on a bank in the city here.

Q. You had money in the bank upon which you drew a check?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. No, sir, I did not at that time; I got this check from somebody else, I don't remember who.

Q. Was there money in the bank for the purpose of taking up that check?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. Yes, sir, there was money in the bank for the purpose of taking up that check.

Q. Did you buy this land in good faith?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and as involving a conclusion of law, and as being leading.)

A. I did.

Q. Have you and Mr. Hamilton been in quiet and peaceful possession of this land since your purchase?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and as involving a conclusion of law, and being leading.)

A. We have.

Q. Have you paid all of the taxes—State, county and municipal—which have been levied upon the lands and assessed?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. We have paid all the taxes, as far as we know.

Q. Do you claim this land as your own, now, at the present time?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. We do.

Q. Did you have any notice at the time of your contract, or at the time of your final purchase, or at any time, of any controversy between the Government and the Southern Pacific Railroad Company with reference to these lands?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, as involving a conclusion of law, and being leading.)

A. At the time of our purchase we did not know there was any controversy whatever. Of course, since that time we have. We had no legal notice of it, however.

Q. At the time of the purchase you were without notice?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, as involving a conclusion of law, and being leading.)

A. Knew nothing of it at all.

Q. Did you purchase this land, believing the railroad owned the same?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant).

A. Yes, sir.

Q. Are you now occupying this land in good faith as a *bona fide* purchaser without notice and for value received?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, as being leading, and a conclusion of law).

A. We are; how do I understand your question; do you mean that we are living on it, or are in possession of it?

Q. In possession of it?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, as leading, and as a conclusion of law.)

A. We are.

CROSS-EXAMINATION.

Mr. Call—Q. What was the date of your original contract with the Railroad Company for this land?

(Question objected to by Mr. Redding as incompetent, immaterial, irrelevant, and not proper cross-examination).

A. By referring to our deed I find it is in 1889, and we had five years to pay for it, so of course that

would bring it in 1884, although I do not remember distinctly it being that time, but it must have been in 1884; it was in February, however, the first part of February.

Mr. Redding—I will state that these contracts, when they are entered into, are generally five year contracts, and that if a deed is issued on a certain date the date of the contract will be five years prior thereto.

Mr. Call—Q. Did you read your deed from the Railroad Company to yourself?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross-examination.)

A. Our present deed?

Q. Yes, sir.

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross-examination.)

A. Yes, sir.

Q. Did you notice that it referred in there to a mortgage to Lloyd Tevis and Gerrit L. Lansing?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross-examination.)

A. I did.

Q. Did you ever look at that mortgage?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, not proper cross-examination, and furthermore, that the deed itself shows that the Trustees of that mortgage release the interest that the mortgagees have in the land involved.)

A. I did not.

Q. Did you know that that instrument refers to the Acts of Congress as being the source of title of the Railroad Company?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross-examination.)

A. I don't clearly understand; do you mean by that instrument the mortgage?

Q. Yes, the mortgage.

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross-examination.)

A. Of course I did not, because I did not know anything about it.

Q. Under what title did you suppose the Railroad Company held this land, then, when you bought it, or pretended to buy it?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross-examination,)

A. I understood that they held it by grant from Congress, and soon after we purchased, we had notice from the Railroad that they had a patent for it, and we supposed that that was the best title we could have.

Q. Was the patent recorded?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross-examination.)

A. I could not tell.

Q. Did you ever examine the patent.

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross-examination.)

A. I did not see the patent; I just simply got notice from the Railroad Company that they had it.

Q. You did not know, then, that the patent purported to be executed in conformity with, and in pursuance of an Act of Congress?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross-examination.)

A. We did not know it, but we supposed so.

Q. Did you ever read the Act of Congress under which they claimed this land?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross-examination.)

A. I do not think I ever did.

Q. You did not know whether that Act of Congress granted that land or not, then?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross-examination, and also that it calls for a legal conclusion of the witness.)

A. I do not know just how to answer that question, because we got most of our information from these parties; unless we were lawyers, or something of that kind, we would get it from papers and from books, and from other parties, and in that way I have heard it, but I do not know it.

Q. You have never examined the terms and conditions of the grant, then, yourself?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross-examination.)

A. I did not.

Q. Did you know that a grant had been made by Congress to the Atlantic and Pacific Railroad Company of lands in California?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross-examination.)

A. Not at that time; I knew it afterwards, I knew it by hearsay.

Q. Did you know that these lands were withdrawn for the Atlantic and Pacific Railroad?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross-examination, and, furthermore, that they are trying to establish a fact on cross-examination as evidence in the case which does not exist.)

A. Not at that time. I never heard of it, then.

Q. Did you ever examine the records of the United States Land Office to determine whether this land had been reserved by the United States for any other purpose?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross-examination.)

A. I have not.

RE-DIRECT EXAMINATION.

Mr. Redding—Q. Did the Southern Pacific Railroad Company, through its Land Agent, represent to

you that it owned the land that it offered to sell to you?

(Question objected to by Mr. Call as immaterial, irrelevant and incompetent, leading, and calling for a conclusion.)

A. They represented to me that they held a legal right to sell those lands.

Q. That they held the title?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, as leading, and calling for a conclusion.)

A. That they held the title.

Q. Did you purchase the lands, believing in their representations?

(Question objected to by Mr. Call as immaterial, irrelevant and incompetent, as leading, and calling for a conclusion.)

A. I did—yes, sir.

Wm. FERGUSON.

Testimony of James Hamilton:

(A witness called on behalf of defendant.)

It is stipulated and agreed between counsel that James Hamilton would testify, if called upon the stand, to the same effect as the last witness, William Ferguson, he being a part owner with Ferguson under the deed of January 18th, 1889, referred to by the witness Ferguson, and marked in this matter "Defendants' Exhibit before the Special Examiner, No. 5," and that the direct examination, cross-examination, and redirect examination of the witness William Ferguson, as appears herein, may stand as the testimony of James

Hamilton, and is deemed in evidence for all intents and purposes, subject to the same objections as interposed by either counsel.)

Testimony of Alexander Cook:

Alexander Cook, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

DIRECT-EXAMINATION.

Mr. Redding—Q. Have you got a deed for any of the land involved in this action?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. Yes, sir.

Q. Please produce it.

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

(Witness produces two deeds.)

Mr. Redding—We offer in evidence a deed from the Southern Pacific Railroad Co., No. 3062, D. O. Mills and Gerrit L. Lansing, Trustees, to M. L. Wicks and Peter Cook, similar in form to the others, dated June 21st, 1887, for all of Section One, Township Six, north of Range Thirteen West, San Bernardino Base and Meridian, containing 640 acres.

(The admission of the deed in evidence is objected to by Mr. Call as incompetent, immaterial and irrelevant.)

(Deed No. 3062, Southern Pacific Railroad Co., D. O. Mills and Gerrit L. Lansing, Trustees, to M. L. Wicks and Peter Cook, dated June 21st, 1887, is marked by the Special Examiner "Defendants' Exhibit before the Special Examiner, No. 6," and a cer-

tified copy thereof, is annexed hereto, it being agreed between counsel that such certified copy may be made by the Special Examiner and annexed hereto, and the original deed returned to the witness.)

Mr. Redding—We next offer in evidence a deed from Peter Cook to Alexander Cook for the west one-half of Section One, Township Six, north Range Thirteen West, San Bernardino Base and Meridian, containing 320 acres, dated November 17th, 1887.

(The admission of the deed in evidence is objected to by Mr. Call as incompetent, immaterial and irrelevant.)

(Deed Peter Cook to Alexander Cook, dated November 17th, 1887, is marked by the Special Examiner "Defendants' Exhibit before the Special Examiner, No. 7," and a certified copy thereof is annexed hereto, it being agreed between counsel that such certified copy may be made by the Special Examiner and annexed hereto, and the original deed returned to the witness.)

Q. How much money did you pay to Mr. Peter Cook for the lands you purchased from him, and mentioned in this deed?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. Five dollars; it is a quit-claim deed.

Q. Do you mean five dollars an acre, or five dollars for the whole?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. For the whole.

Q. Do you claim to own this land now yourself?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. Yes, sir.

Q. Did you purchase it in good faith?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, as leading, and involving a conclusion of law.)

A. I did.

Q. Have you paid all the taxes, State, county, and municipal, which have been levied and assessed on the land since the deed?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. Yes, sir, I have.

Q. Did you have any notice at the time of your purchase of any controversy with reference to this land that existed between the United States and the Southern Pacific Railroad Company?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant).

A. None.

Q. Have you occupied this land peacefully, and been in peaceable possession of it ever since your purchase?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant)?

A. Yes, sir; I have.

Q. Did you purchase it in good faith, without notice, and as a *bona fide* purchaser?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant).

A. I did.

Q. And for value received?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. Yes, sir.

CROSS-EXAMINATION.

Mr. Call—Q. Where is the land located?

A. In Antelope Valley, Los Angeles County.

Q. South West of Lancaster?

A. West, I think.

Q. Have you ever been there?

A. Yes, sir; I have.

Q. Do you live there? A. No, sir.

Q. How much is it worth an acre?

A. I don't know.

Q. Is it worth anything?

A. Yes, sir, I suppose so.

Q. How much do you suppose it is worth?

A. It has been selling at twelve dollars an acre, similar land.

Q. Did you know by what title the railroad held this land—what their claim was to it?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross-examination.)

A. I did not.

Q. You did not know whether they held it under an Act of Congress, then, or not?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross-examination.)

A. No, sir.

Q. You never read the Act of Congress?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross-examination.)

A. I have not.

Q. Did you ever read the Act of Congress making a grant to the Atlantic and Pacific Railroad?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross-examination.)

A. I have not.

Q. Did you ever examine the United States Land Office records?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross-examination.)

A. No, sir.

RE-DIRECT EXAMINATION.

Mr. Redding—Q. At the time of your purchase did you believe that the person who sold this land to you was the owner thereof?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. Yes, sir; I did.

Q. Did the Southern Pacific Railroad Company, through its Land Agent, represent to you that it owned the land that it offered to sell to you?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, as leading, and calling for a conclusion.)

A. They represented to me that they held a legal right to sell those lands.

Q. That they held the title?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, as leading, and calling for a conclusion.)

A. That they held the title.

Q. Did you purchase the lands believing in their representations?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, as leading and calling for a conclusion.)

A. I did, yes, sir; and no other representations, I wish to explain my answer on page 29, where I say that I paid \$5 for the whole, by stating that the consideration in the deed read \$5 for the whole, but that in reality I paid Mr. Peter Cook \$5 per acre, or \$1600 for the whole.

ALEXANDER COOK.

Testimony of Ira H. Bradshaw:

Ira H. Bradshaw, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. Redding—Q. You are one of the defendants in this action, are you?

A. I believe so.

Q. Have you a deed for any of the lands involved in this action?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. Yes, sir, I have. (Producing.)

Mr. Redding—The defendants offer in evidence Deed No. 5878, from the Southern Pacific Railroad

Co., D. O. Mills and Gerrit L. Lansing, Trustees, to Ira H. Bradshaw, dated September 29th, 1887, for the northeast quarter of Section Fifteen, in Township Five, North of Range Eleven West, San Bernardino Base and Meridian, containing 160 acres.

(The admission of the deed in evidence is objected to by Mr. Call as incompetent, immaterial and irrelevant.)

(Deed No. 5878, Southern Pacific Railroad Co., D. O. Mills and Gerrit L. Lansing, Trustees, to Ira H. Bradshaw, dated September 29th, 1887, is marked by the Special Examiner "Defendants' Exhibit before the Special Examiner, No. 8," and a certified copy thereof is annexed hereto, it being agreed between counsel that such certified copy may be made by the Special Examiner, and annexed hereto, and the original deed returned to the witness.

Q. How much money did you pay for this land?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant).

A. Four hundred dollars.

Q. To whom?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant).

A. To the Agent of the Southern Pacific Railroad Company, Jerome Madden.

Q. Where did you pay it?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant).

A. I paid it in the Land Office.

Q. Have you been in quiet and peaceable possession of this land ever since your purchase?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant).

A. Yes, sir.

Q. Have you paid all of the taxes, State, county and municipal, which have been levied and assessed on the land since the date of your purchase?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant).

A. I have, all that I know of; I wrote for a statement last year, and they said that it had not been assessed, but up before that I paid; I believe the receipts are left with you, there are some of them there.

Q. Did you purchase this land, believing that the Southern Pacific Railroad Company was the owner of it at the time they made out the deed?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.) A. I did.

Q. Did you purchase it in good faith?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, as leading, and involving a question of law.) A. I did.

Q. Did you have any notice of any kind from any source of any controversy between the Government of the United States and the Southern Pacific Railroad Company, one of the defendants in this suit, at the time of this purchase?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, as involving a question of law, and not the best evidence.)

A. I did not, or I should not have purchased it.

CROSS-EXAMINATION.

Mr. Call—Q. You say you thought the Railroad Company owned this land? A. Yes sir, I did.

Q. How did you think they held it—by what kind of a title?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross-examination.)

A. By a patent.

Q. Did you understand there was an Act of Congress making them a grant of this land?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross-examination.)

A. I understand they had a patent for the land signed by U. S. Grant.

Q. What authority was there to make that patent?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross-examination.)

A. I do not know.

Q. Did you ever read the Acts of Congress?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross-examination.)

A. I did not.

Q. Did you suppose the officers of the Land Department could issue a patent when there was no law authorizing it?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross-examination.)

A. I do not know; I simply saw the patent signed by U. S. Grant, it was shown to me by Jerome Madden.

Q. Did you ever read the Act of Congress of March 3d, 1871, making a grant to the Southern Pacific Railroad Company?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross-examination.)

A. I did not.

Q. Did you know that this land had been previously granted to the Atlantic & Pacific Railroad?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, not proper cross-examination, and calling for hearsay evidence.)

A. I did not.

Q. Did you know that it was withdrawn for the Atlantic and Pacific Railroad at the time you bought?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, not proper cross-examination, and calling for hearsay testimony.)

A. I did not; if I had I should not have bought.

Q. Did you examine the records of the Land Office?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross-examination.)

A. I did not.

RE-DIRECT EXAMINATION.

Mr. Redding—Q. Did the Southern Pacific Railroad Company represent to you that they owned the land when they offered to sell it to you?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, as leading and calling for a conclusion.)

A. They did.

Q. Did you purchase this land relying upon those representations?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, as leading and calling for a conclusion.)

A. I did.

Q. And believing in them?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, as leading and calling for a conclusion.)

A. Yes sir.

IRA H. BRADSHAW.

Testimony of Jerome Madden:

Jerome Madden, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. Redding—Q. Where do you reside?

A. In San Francisco.

Q. What is your occupation?

A. I am the Land Commissioner or Land Agent of the Southern Pacific Railroad Company.

Mr. Redding—Mr. Call, will you agree that Mr. Madden is the duly appointed Land Agent, or do you wish that I should procure his appointment?

Mr. Call—I wish you to make proof of whatever is essential.

Mr. Redding—Q. Have you with you your authority, or the authorization, making you Land Agent?

A. I have. (Producing.)

Q. Have you also a copy of any resolution of the Board of Directors of the Southern Pacific Railroad Company? A. I have. (Producing.)

Mr. Redding—The defendants offer the following certified copy of a resolution of the Board of Directors of the Southern Pacific Railroad Company, appointing Jerome Madden Land Agent of the company.

(It is stipulated and agreed between counsel, that a copy of said paper may be made by the Special Examiner and inserted in this record, and the original paper here offered in evidence may be returned to the possession of the witness. The certified copy is marked by the Special Examiner, "Defendants' Exhibit before the Special Examiner, No. 1," and the following is a copy of same:

"SECRETARY'S OFFICE,
SOUTHERN PACIFIC RAILROAD COMPANY,
SAN FRANCISCO, May 10th, 1876."

"I, J. L. Willcutt, Secretary of the Southern Pacific Railroad Company, do hereby certify, that at a meeting of the Board of Directors of said Company, held this day, the following resolution was adopted by a unanimous vote:

"RESOLVED AND ORDERED,
That Jerome Madden be, and he is, hereby appointed the Land Agent of this Company for the purpose of selling or contracting to sell its lands in

"the State of California or in any other State or Territory of the U. S., and to manage, conduct and carry on the business of its Land Office. And he is hereby authorized and empowered as such Land Agent "to sign his name for this Company to such contracts, "agreements, and other documents or papers as may "or shall be requisite and necessary for the full, complete, and effectual transaction of all the business "aforesaid.

(Seal of the Southern Pacific Railroad Company.) "IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the said Company.

"J. L. WILLCUTT,

"Secretary S. P. R. R. Co."

Mr. Redding—Q. What is the date of that commission, if you please? A. May 10th, 1876.

Q. Have you been Land Agent of the Southern Pacific Railroad Company from that date down to the present time?

A. I have.

Q. And are you still the Land Agent?

A. I am still the Land Agent of the Southern Pacific Railroad Company.

Q. Were you in the employ of the Southern Pacific Railroad Company, one of the defendants herein, prior to 1876? A. I was.

Q. In what capacity?

A. As deputy land agent.

Q. For how long a period of time were you in that capacity.

A. About one year before that, and before that time, without being regularly deputized, I was an assistant in the office of the Southern Pacific Railroad Company's Land Department.

Q. Then your employment in the Land Department of the defendant, the Southern Pacific Railroad Company, commenced at that time?

A. About the summer of 1871.

Q. Have you been constantly and without intermission in the employ of that corporation ever since?

A. I have.

Q. Are you the custodian of the papers, documents and records of the defendant the Southern Pacific Railroad Company, in your possession as Land Agent?

A. I am, that is, all the documents, papers, books and accounts relating to the lands that were granted to it by the Congress of the United States.

Q. The lands in controversy in this suit are those included in the grant of Congress of March 3d, 1871, which, by its terms, had a direction from Tehachapi by the way of Los Angeles to Fort Yuma; have you prepared, and have you kept, and do you keep in your department, a record of these lands and their status on the books of your company?

A. I do.

Q. Have you that record in your office?

A. I have.

Q. The bill of complaint in this case in which you are testifying calls for the defendant, the Southern Pacific Railroad Company, to prepare and furnish for the purposes of the case, a complete statement of all the lands involved in the cause, their condition with

reference to having been sold, or contracted to be sold, and with reference to the names of the people who have bought or contracted to buy them; did you have, in compliance with the demand in this bill of complaint, such a statement prepared officially in your office?

A. I had such a statement prepared.

Mr. Redding—Mr. Call, I would state that the original of said statement is attached to the answer on file as an exhibit attached to the answer. I have here now a press copy from the original on thin tissue paper, and inasmuch as the original answer is on file in Los Angeles I shall simply refer to this as being the same exhibit as attached to the answer, inasmuch as it is a press copy; and I will prove that it is.

Mr. Call—Do you offer it in evidence?

Mr. Redding—Yes, I offer it in evidence, for the purpose of showing the status of the lands on the books of the defendant, the Southern Pacific Railroad Company, with reference to their having been sold or contracted to be sold, and the names of the people who have purchased.

Mr. Call—Has Mr. Madden testified that this is a correct transcript?

Mr. Redding—I will ask him.

Q. Will you please look at this document and state whether or not it is an impression copy, or press copy, from the original statement which you have just testified to was made in your department, setting forth the condition of the lands in this suit, with reference to their having been sold or contracted to be sold to third parties?

A. That is a press copy of the statement that was made in the Land Office of the Southern Pacific Rail-

road Company under my supervision, for the purpose of showing what lands were sold and were involved in suit 184.

Q. You mean this suit in which you are now testifying? A. Yes, sir.

Mr. Redding—The defendants offer this press copy in evidence. I will request the Examiner to make note, that inasmuch as it will be unnecessary to have two of these on file in the same case, that the exhibit now attached to the answer may be substituted for the press copy exhibit which we now offer.

Mr. Call—I desire to make objections to the introduction of the exhibit in evidence in this case, on the ground that it is incompetent, immaterial and irrelevant, and not the best evidence of the matters sought to be adduced. In so far as the copy, which is attached to the answer, may go to the discovery sought by the bill, it will be received for what it is worth for that purpose, but as evidence in this case it is objected to on the above grounds.

Mr. Redding—Do I understand that you object to this press copy, or that you object to the original exhibit?

Mr. Call—I object to the exhibit being put in evidence. I have no objections to a copy being substituted for an original, when properly certified by the Examiner, and stand in lieu of it.

Mr. Redding—This is a copy now that I am using of the original, which is attached to the answer. Of course, we have not got the original exhibit here, but this is an exact impression copy, and virtually contains everything that that does. Now, what I want to

know is, whether your objection runs to the competency of the impression copy, or to the competency of the testimony on the original exhibit?

Mr. Call—As I stated, I make no objection to the copy when properly certified as being a copy of the original, but I object to it as being incompetent, immaterial and irrelevant, and not being evidence, nor the best evidence of the facts which are therein attempted to be shown.

Mr. Redding—I would like to state to you, Mr. Call, that this exhibit has been prepared at the instance of the Government. The Government has called upon the defendants to set forth the condition of the lands involved on the books of the Company.

Mr. Call—That is by way of a discovery, not by way of a receiving any such statement as evidence going to show that the Government was not the owner of the lands involved in the suit.

Mr. Redding—What do you mean by discovery?

Mr. Call—Discovery sought by the bill of information desired by the Government.

Mr. Redding—This is the information that we are giving you.

Q. Is this a correct statement from your books of the status of these lands?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence.)

A. That statement is absolutely correct.

Q. What does it set forth?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence.)

A. It sets forth the exact status of the land on the books of the Company.

Q. Does it tell to whom the Railroad Company has sold these lands, if at all?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence.)

A. If a sale has been made it shows correctly the person to whom the land has been sold.

Q. Does it give the description of the particular piece of land sold in each instance?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence.)

A. It does.

Q. Does it give the amount for which it was sold in each instance?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence.)

A. It does.

Q. Does it give the name of the purchaser and his address?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence.)

A. It gives the name of the purchaser and the address that he gave at the time of the sale.

Q. Does it declare whether the land sold is patented or unpatented?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence.)

A. It shows the lands that were patented or unpatented at that time.

Q. Is this statement compiled from your official records?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence.)

A. It is.

Q. And under your authority?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence.)

A. And under my authority and under my supervision.

Q. Were the clerks or people who prepared this statement, under your supervision, in the employ, at the time of so doing, of the Southern Pacific Railroad Company, one of the defendants herein?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence.)

A. They were.

Mr. Redding—I will ask that this press copy be marked Defendants' Exhibit before the Special Examiner, No. 2.

(The press copy referred to by witness is marked by the Special Examiner, "Defendants' Exhibit before the Special Examiner, No. 2.")

Q. Were the amounts which are set forth in that statement received from the purchasers by the Railroad Company?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence.)

A. The amounts were received by the Southern Pacific Railroad Company from the purchasers or from their agents.

Q. What form of money was received by the defendant, the Southern Pacific Railroad Company, from these purchasers, what I mean is, was it money of the United States of America?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence.)

A. It was always money of the United States of America, or I would say its equivalent in the shape of check, or something of that kind.

Q. Where you received a check, was the check cashed into money?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence.)

A. The check was always cashed in United States money or there was no sale; coin was usually received; sometimes checks were received; when checks were received they were turned in, and the company got United States coin in lieu of them.

(Witness temporarily withdrawn.)

Testimony of Jerome Madden (Recalled.)

DIRECT EXAMINATION (Resumed).

Mr. Redding—Q. There have been several deeds introduced this morning in similar form, each and all of them from the Southern Pacific Railroad Company, D. O. Mills and Gerrit L. Lansing, Trustees, to several defendants in this suit, and who were purchasers of these lands. They have been marked by the Examiner, but I will hand you the deeds as they have been introduced, and ask you if you recognize them?

(Defendants' Exhibits before the Special Examiner, Nos. 3, 4, 5, 6, 7 and 8, shown witness.)

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. I recognize them, and that is my signature to them.

Q. Is your signature there in each instance?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. Yes, sir; all these are genuine deeds for the lands described in them.

Q. Did you, as Land Agent of the Southern Pacific Railroad Company, one of the defendants herein, represent to these purchasers and these defendants that the Southern Pacific Railroad Company had title to sell to these lands?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, as leading, and calling for a conclusion.)

A. I represented to them that before a deed issued the Railroad Company had a United States Patent for the land, and that therefore the title was good.

Q. Do you know as a fact whether or not United States Patents have issued for those lands?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, as leading, calling for a conclusion, and not the best evidence.)

A. United States Patents issued for the lands or these deeds would not have been executed.

Q. Were those deeds issued subsequent to the receipt of a United States Patent for those lands from the Government by yourself as Land Agent?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, as leading, calling for a conclusion, and not the best evidence.)

A. They were.

Q. Does the exhibit introduced this morning in connection with your testimony, the press copy, Defendants' Exhibit before the Special Examiner, No.

2, set forth from the official records of your department the fact that United States Patents have been issued and do exist for the lands mentioned in those deeds?

(Question objected to by Mr. Call as incompetent, immaterial, and irrelevant, as leading, calling for a conclusion, and not the best evidence.)

A. Where a patent has been received from the United States for the land described in that press copy a note has been made that it has so issued.

Q. Does that appear on that press copy?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, as leading, calling for a conclusion ,and not the best evidence.

A. The note appears where the patent has issued.

Q. I mean on that exhibit.

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, leading, calling for a conclusion, and not the best evidence.)

A. On that exhibit.

Q. Can you produce for exhibition to this Honorable Court the United States Patents for whatever lands in this suit may have been issued?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. I can.

(The further taking of testimony before the Special Examiner was then continued by consent of counsel, until Monday, September 11th, 1893, at 10:30 A. M.

SAN FRANCISCO, September 11th, 1893.

Testimony of Jerome Madden:

DIRECT EXAMINATION (Resumed).

Mr. Redding—Q. Have you been able to procure from the official records of your department the United States Patents for certain portions of the land involved in this suit?

A. I have; here they are (producing).

Mr. Redding—Mr. Call, I offer, before they are introduced, to show to you all of the patents for the lands involved, or portions of the lands involved in this suit. These patents not only include these lands, but many hundreds of thousands of acres of other lands. These patents, which are the originals, are in use in the land department daily, officially, for the business of the Southern Pacific Railroad Company. I would like to have you take whatever time you wish to examine them and allow the defendants then to introduce one patent in due and certified form to represent all the others, and then allow the defendants to retire the originals of all these patents to the archives of the land department for use in this business. Whatever time you may deem to be necessary, of course, we will grant you.

Mr. Call—I am not prepared to make any stipulation with reference to substituting a stipulated fact for the fact which is required by the defendants, or which they deem necessary to sustain their case. It involves a risk on my part that I am not prepared to take, and it may be that later on in making up the record for the Supreme Court that we can there

eliminate large parts of the record by substituting the same agreed facts.

Mr. Redding—I do not want any agreed facts at all substituted.

Mr. Call—I am not prepared to make any stipulation in reference to it at this time.

Mr. Redding—Will you allow us to substitute certified copies of those patents, or portions thereof, in lieu of the originals, copies, certified by the Special Examiner, as we have of the deeds?

Mr. Call—After they have been introduced they can be withdrawn upon substituting a certified copy.

Mr. Redding—Mr. Examiner, will you keep these exhibits that we introduce in your custody, and allow them to remain in the Land Department for daily use upon any guarantee or assurance sufficient unto yourself that they will be held inviolate until the certified copies are made?

Special Examiner—I do not suppose there will be any objection to that.

Mr. Call—They should be in the hands of the Examiner. He can keep them where he likes, but I want them where I can get at them. Let them remain in the hands of the Examiner until the copies are made.

Mr. Redding—You can keep them in your custody as Examiner, but allow them to remain in the Land Department for daily use. Is that satisfactory to you, Mr. Examiner?

Special Examiner—Entirely so.

(It is stipulated and agreed between counsel that wherever the words "same objection" are used in this record, they are understood to refer to the last preceding objection.)

Mr. Redding—Mr. Call, in making certified copies of those patents which we now introduce, will it be satisfactory to the Government if the Special Examiner copies the description of those lands in the certified copies which are involved in this suit only, and does not include the description of other lands that are not involved in this suit? That would simply result in having the patents introduced in toto, less outside lands that are not in issue.

Mr. Call—I will consent that the Special Examiner shall make copies of those patents, so far as they involve the lands in suit, and omit those lands that are not involved in the suit.

Mr. Redding—And that may be deemed a certified copy of the entire patent?

Mr. Call—Yes, sir. But I do not admit the competency, materiality or relevancy of the evidence, and desire to make objections when they are introduced.

Mr. Redding—That is understood; but you do agree that a certified copy of these patents, omitting those lands which are not in evidence in suit, will be taken as a certified copy of the entire patent to all intents and purposes?

Mr. Call—Yes, in lieu of the originals.

Mr. Redding—The defendants offer in evidence United States Patents to the Southern Pacific Railroad Company Branch Line, namely, the Southern Pacific Railroad Company Branch Line of road from Tehachapi by the way of Los Angeles to Fort Yuma, Patent No. 1, Patent No. 2, Patent No. 6, Patent No. 9.

Patent No. 1, described as follows: "Patent No. 1, (Branch Line), Southern Pacific Railroad Company of

California;" and we offer it as Defendants' Exhibit before the Special Examiner, No. 9, and pass to the Government's counsel for inspection.

The admission of the patent in evidence is objected to by Mr. Call as incompetent, immaterial and irrelevant.

And upon the further ground, that it appears from the terms and conditions of the grant by the Act of Congress of March 3, 1871, under which the defendants claim these lands, that these lands were not covered by that grant, but were excluded therefrom.

And upon the further ground, that these lands had been by the Act of Congress of July 27, 1866, granted to the Atlantic and Pacific Railroad Company, and were reserved lands from the date of said grant down to July 6th, 1886, when they were forfeited and resumed to the United States by an Act of Congress of that date;

And upon the further ground, that the Southern Pacific Railroad Company, to which Company a grant was made by the Act of Congress of March 3rd, 1871, as by its own Act, surrendered and forfeited to the United States all of these lands and all claim and interest therein;

And it is objected to upon the further ground, that it appears to have been executed without authority of law, and is absolutely null and void;

And upon the further ground, that as between the United States and these defendants, the title to these lands has been adjudicated by final decrees entered in the cases of the United States vs. The Southern Pacific Railroad Company, and others, which are in evidence in this case.

(Patent No. 1, Branch Line, Southern Pacific Railroad Company, of California, is marked by the Special Examiner, "Defendants' Exhibit before the Special Examiner, No. 9," and a certified copy thereof is annexed hereto in accordance with the agreement of counsel.)

Mr. Redding—Q. Was this Patent, No. 1, Defendants' Exhibit before the Special Examiner, No. 9, received by you from the Interior Department and Executive Department of the United States as Land Agent of the Southern Pacific Railroad Company, and into your custody as such?

(Same objection.)

A. This particular one was not received by me.

Q. By whom was it received?

(Same objection.)

A. It was received by my predecessor in office.

Q. Have you had this patent in your official custody since you have been Land Agent of the Southern Pacific Railroad Company, one of the defendants herein?

(Same objection.)

A. It was handed over to me by my predecessor in office on May 10th, 1876, and it has been in my possession ever since.

Q. Have you as Land Agent of the Southern Pacific Railroad Company sold any of the lands mentioned in this patent to third parties for value received?

(Same objection.)

A. I have.

Mr. Redding—Defendants offer in evidence Patent No. 2, described as follows: "Patent No. 2, of the

Branch Line of the Southern Pacific Railroad Company," and ask that the Special Examiner mark it as Defendants' Exhibit No. 10.

(Same objection.)

(Patent No. 2 of the Branch Line of the Southern Pacific Railroad Company is marked by the Special Examiner "Defendants' Exhibit before the Special Examiner, No. 10," and a certified copy thereof is annexed hereto in accordance with the agreement of counsel.)

Q. When was Patent No. 2 received by the Southern Pacific Railroad Company from the Government of the United States?

(Same objection.)

A. It was received some short time after the date of its issuing, which was on the 4th of April, 1879.

Q. Did you receive that patent as Land Agent of the Southern Pacific Railroad Company?

(Same objection.)

A. I did.

Q. Have you retained it in your custody as such on behalf of the company ever since its receipt?

(Same objection.)

A. Yes, sir.

Q. Have you, as Land Agent, sold to innocent purchasers, lands included in that patent, and for value received?

(Same objection.)

A. I have.

Q. Will you, with the Special Examiner, or such assistants as he may appoint, and also with such assistants as you may from your employees in your office

afford, make excerpts from these several patents of the particular lands involved in this action therein contained, and also the particular lands which have been sold to third parties, the parties involved in this suit and contained in these patents?

(Same objection.)

A. I will.

Mr. Redding—Defendants offer in evidence United States Patent No. 6, described as follows: "Patent No. 6, of lands granted in California to the Southern Pacific Railroad Company, Act March 3rd, 1871."

(Same objection.)

(Patent No. 6 of lands granted in California to the Southern Pacific Railroad Company, Act March 3, 1871, is marked by the Special Examiner, "Defendants' Exhibit before the Special Examiner, No. 14," and a certified copy thereof is annexed hereto in accordance with the agreement between counsel.)

Q. What date did you receive this Patent No. 6, from the Government, and as Land Agent of the Southern Pacific Railroad Company?

(Same objection.)

A. January 22, 1884.

Q. Have you retained this patent in your official custody as said Land Agent ever since?

(Same objection.)

A. I have.

Q. Is it the original document itself that we now offer?

(Same objection.)

A. It is.

Q. Have you sold lands embraced therein to third parties, innocent purchasers, for value received?

(Same objection.)

A. I have.

Mr. Redding—Defendants offer in evidence United States Patent No. 9, described as follows: "Patent No. 9 of lands granted by the Act of March 3rd, 1871, to the Southern Pacific Railroad Company, Los Angeles District, California."

(Same objection).

(Patent No. 9 of lands granted by the Act of March 3, 1871, to the Southern Pacific Railroad Company, Los Angeles, District of California, is marked by the Special Examiner, "Defendants' Exhibit before the Special Examiner, No. 18," and a certified copy thereof is annexed hereto in accordance with the agreement between counsel).

Q. What date did you receive this Patent No. 9 from the Government and as Land Agent of the Southern Pacific Railroad Company?

(Same objection).

A. January 23, 1885.

Q. Have you retained this patent in your official custody as said Land Agent ever since?

(Same objection).

A. I have.

Q. Is it the original document itself that we now offer?

(Same objection.)

A. It is.

Q. Have you sold lands embraced therein to third parties, innocent purchasers, for value received?

(Same objection.)

A. I have.

Mr. Redding—Q. You stated in your examination at the last hearing of this case, that the lands sold to the various defendants whose deeds were introduced were patented prior to their being sold. That they would not have been sold and a deed for them would not have issued unless they had been patented; do these patents that the defendants have introduced today describe the lands and include the lands which are described and included in these deeds?

(Same objection.)

A. They do; sometimes lands are sold in anticipation of receiving the patent, but the deed for the lands never issues until after the reception of the patent.

Q. The lands involved in this suit are according to the allegations of the bill and the admissions of the answer, within the primary and indemnity limits of the Branch Line grant to the Southern Pacific Railroad Company, of March 3rd, 1871, which grant by its terms are from Tehachapi by way of Los Angeles to Fort Yuma; were you in the employ of the Southern Pacific Railroad Company, one of the defendants herein, in the year 1871?

(Same objection.)

A. I was.

Q. Did you see the defendant, the Southern Pacific Railroad Company, building its road from Tehachapi by the way of Los Angeles to Fort Yuma?

(Question objected to by Mr. Call as immaterial, irrelevant and incompetent, and not the best evidence.)

A. I frequently at intervals saw the agents of the Southern Pacific Railroad Company constructing the road on the line which you mention.

Q. Did you know the Chief Engineer of the Southern Pacific Railroad Company?

(Same objection.)

A. I did.

Q. What was his name at that time, in 1871?

(Same objection.)

A. His name in 1871 was first S. S. Montague, and next George E. Gray.

Q. Did you know any of the assistants or deputies of these gentlemen?

(Same objection.)

A. I knew in the engineer corps pretty much all of them.

Q. What were some of their names?

(Same objection.)

A. Mr. Phelps, Mr. Haslett, Mr. Bates, Mr. Flanagan, and almost all the others.

Q. Did you see these men at work building this road?

(Same objection.)

A. Very frequently.

Q. Between what years did you see this road being built from Tehachapi by the way of Los Angeles to Fort Yuma?

(Same objection.)

A. From 1873 to either 1876 or 1877.

Q. Did you go out over the road while it was being built?

(Same objection.)

A. Frequently.

Q. What did you see these men do at the front of the road or along the road, and other employees of the

defendant, the Southern Pacific Railroad Company, during this period of time?

(Same objection.)

A. I saw them laying out the line of road and also constructing it.

Q. Did you know who the Paymaster of the Southern Pacific Railroad Company, one of the defendants herein, was, in those days?

(Same objection.)

A. I did.

Q. What was his name?

(Same objection.)

A. James N. Hanford.

Q. Did you see him on the road performing his duties as Paymaster?

(Same objection.)

A. I think I have.

Q. Did you see Mr. Hanford in the performance of his duties along the road?

(Same objection.)

A. I have seen him or his assistant.

Q. Did you ever take a trip with him over the road?

(Same objection.)

A. I took a trip at one time from San Francisco to the Rio Grande in his pay car.

Q. That is beyond Fort Yuma, is it?

(Same objection.)

A. That is away by El Paso, in Texas.

Q. Did you pass over the entire length of the branch line road from Tehachapi by the way of Los Angeles to Fort Yuma?

(Same objection.)

A. I did.

Q. Did you see locomotives hauling cars over the line of road between those points?

(Same objection.)

A. Yes; numbers of them.

Q. What was Mr. Hanford paying out money for along the line of this road?

(Same objection.)

A. Paying it for wages to persons employed by the Southern Pacific Railroad Company.

Q. Employed for what purpose?

(Same objection.)

A. Operating the road and constructing it.

Q. Do you know what the name of the Company was that was employing these people and building this road between the dates that you have mentioned?

(Same objection.)

A. I do.

Q. State it please?

(Same objection.)

A. The Southern Pacific Railroad Company.

Q. Was that the same Company that employed you as employed them?

(Same objection.)

A. It was the same Company that employed all of us. The defendant in this action was the Company that employed me and the others also.

Q. Have you as Land Agent of the Southern Pacific Railroad Company and in its employ, been in correspondence with the various departments of the Government of the United States, particularly the Interior Department?

(Same objection.)

A. I have been in correspondence with the Interior Department and sometimes with the Indian Department.

Q. Between what years?

(Same objection.)

A. From the date of my taking charge of the Southern Pacific Land Office up to the present time.

Q. Has there ever been any change in the corporate relation of the Southern Pacific Railroad Company as to its identity or its name or its existence from the first date that you have had any connection therewith down to the present time?

(Same objection.)

A. There never has to my knowledge anywhere, and certainly not in the Land Department, under my charge.

Q. Has any department of the Government ever questioned the identity of the Southern Pacific Railroad Company, in the correspondence with you, as being different from what it was when you first commenced your dealings officially with them as Land Agent down to the present time?

(Same objection.)

A. It has not.

A recess was then taken by consent of counsel until 2:30 p. m.

San Francisco, Monday,

September 11th, 1893, 2:30 p. m.

DIRECT EXAMINATION OF JEROME MADDEN
(Resumed).

Mr. Redding—Q. Has the Interior Department of the Government of the United States, in its dealings with the Land Department of the Southern Pacific Railroad Company, one of the defendants herein, ever called in question the identity of the said Southern Pacific Railroad Company as being different in anywise from that which existed in 1866 to that which is in existence at the time this suit was brought?

(Same objection.)

A. It had not and it has not up to the present time.

Q. Do you know whether or not the Interior Department and the Government have recognized the Southern Pacific Railroad Company, one of the defendants herein, as being one and the same corporation as the Southern Pacific Railroad Company of 1866, and of all of the intermediate time?

(Same objection.)

A. It has never called in question the identity of the Southern Pacific Railroad Company in its dealings with me as Land Agent; it has always considered it the same as it was in 1866.

Q. Is the same true as to all its dealings with the Land Department of the Southern Pacific Railroad Company?

(Same objection.)

A. It is.

Q. Were you ever in the employ of the United States Commissioners, appointed by the President, to examine the constructed portions of the road of this defendant, the Southern Pacific Railroad Company? (Same objection.)

A. I was not.

Q. Were you ever associated with them in any way on behalf of any person in reference to their duties?

(Same objection.)

A. I was detailed by the Southern Pacific Railroad Company to act as a Secretary for the Commissioners.

Q. Did the Commissioners recognize you as acting in that capacity?

(Same objection.)

A. They did.

Q. In what years did this occur?

(Same objection.)

A. In regard to this road, from April, 1874, until December, 1877.

Q. Have you any of the reports of the Commissioners upon the construction of this road made by them in their official capacity?

(Same objection.)

A. I have; I have them all, that is, duplicate originals of all of them.

Q. Will you please produce the first report of those Commissioners?

(Same objection.)

A. Here it is (producing).

Mr. Redding—Defendants offer in evidence the duplicate originals of the report of the United States

Commissioners of the first examination of 50 miles constructed of the Southern Pacific Railroad Company between San Fernando and Spadra, dated April 15th, 1874, and ask that it be marked "Defendants' Exhibit before the Special Master, No. 29."

Mr. Call—We will object to its introduction in evidence as incompetent, immaterial and irrelevant, and upon the further ground that it appears that the Southern Pacific Railroad Company, to which the grant of March 3, 1871, was made, had ceased to exist as a corporation prior to the making of this report and prior to the construction of said road, and that such report is made without any authority of law, and was then and is now, null and void.

Mr. Redding—Mr. Call, I call your attention to the fact that this report appears in Case 68 as Respondents' Exhibit AA, and is found on page 320 of the Record in Case 68. At that time we had these reports copied, and agreed that they were certified copies of the originals; therefore, I will ask you whether you will allow me to obtain a substitution of that exhibit in Case 68, so that I can retire this original to Mr. Madden's office.

Mr. Call—And substitute those copies for this original?

Mr. Redding—Yes; the same as you yourself have done in this case with other official documents.

Mr. Call—I have no objections to its being done upon being certified by the Clerk.

Mr. Redding—The ones in evidence in Case 68 are certified as being copies of these originals now introduced here.

Mr. Call—I would like to have the Clerk certify they are copies of these you are now offering. I have not examined them, and know nothing as to the identity of them, or about their being the same. Upon their being properly identified I have no objection to their being substituted.

Mr. Redding—When this record goes to Los Angeles I will ask the Special Examiner to request of William M. Van Dyke, Clerk of the United States Court, to make a certificate upon the exhibits already introduced in Case 68, and known as the report of Commissioners on the constructed portions of the defendants' road certifying that those on file in that case are exemplifications of the originals now introduced, and that they can be substituted for the originals in conformity with the method adopted in this case as to other exhibits taken out of Case 68 and offered in this.

(The duplicate original of the report of the Commissioners on the first examination for the 50 miles constructed of the Southern Pacific Railroad Company, between San Fernando and Spadra, dated April 15th, 1874, is marked by the Special Examiner "Defendants' Exhibit before the Special Examiner, No. 29.")

Q. In whose handwriting is this exhibit last offered, if you know?

(Same objection.)

A. It is in the handwriting of a man named Preece; however, that is merely a copy of what I had written under the direction of the Commissioners.

Q. Did you accompany the Commissioners on their journey?

(Same objection.)

A. I did.

Q. Did you see them in the act of examining the road?

(Same objection.)

A. I saw them in the act of examining the road.

Q. Did you make this report under their instructions and by virtue of their conclusions as to its construction?

(Same objection.)

A. I did; and after it was finished they examined it very carefully indeed before signing it.

Q. Do I understand you to say that you were the Secretary of these Commissioners?

(Same objection.)

A. I had no official title; none of the Commissioners were very good penmen and I was detailed by the Southern Pacific Railroad Company to go with them and help them all I could.

Q. Did they agree with you that you should do that service for them?

(Same objection.)

A. Yes, sir; they were very much pleased that I should go in to assist them.

Q. Have you the second report of those Commissioners?

(Same objection.)

A. I have.

Mr. Redding—Defendants offer in evidence the report of the United States Commissioners, dated October 21st, 1875, showing an examination of the second section of the constructed road of the Southern

Pacific Railroad Company, one of the defendants herein, from Spadra to San Gorgonio Summit, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 30."

(Same objection.)

(The report of the United States Commissioners, dated October 21st, 1875, showing an examination of the second section of the constructed road of the Southern Pacific Railroad Company, from Spadra to San Gorgonio Summit, is marked by the Special Examiner "Defendants' Exhibit before the Special Examiner, No. 30.")

Q. That is an original duplicate?

(Same objection.)

A. That is an original duplicate.

Q. Have you the third report?

(Same objection.)

A. Here it is; this is also an original duplicate (producing).

Mr. Redding—Defendants offer in evidence the report of the United States Commissioners for the 3rd section of the completed road of the Southern Pacific Railroad Company, one of the defendants herein, dated June 22nd, 1876, showing the construction of 50 miles from San Gorgonio Summit to Indio, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 31."

(Same objection.)

(The report of the United States Commissioners for the 3rd section of the completed road of the Southern Pacific Railroad Company, dated June 22nd, 1876, showing the construction of 50 miles from San Gor-

gonio Summit to Indio, is marked by the Special Examiner, "Defendants' Exhibit before the Special Examiner, No. 31.")

Q. Have you the fourth report?

(Same objection.)

A. Here it is; this is also an original duplicate (producing).

Mr. Redding—Defendants offer in evidence the report of the United States Commissioners for the fourth section of 78.50 miles, dated February 17th, 1877, from San Fernando to Mojave and ask that it be marked, "Defendants' Exhibit before the Special Examiner, No. 32."

(Same objection.)

(The report of the United States Commissioners, dated February 17th, 1877, showing an examination of the fourth section of the constructed road of the Southern Pacific Railroad Company, one of the defendants herein, from San Fernando to Mojave, is marked by the Special Examiner, "Defendants' Exhibit before the Special Examiner, No. 32.")

Q. Have you the fifth report?

(Same objection.)

A. Here is the original duplicate of the report of the Commissioners on the examination of the 5th section of the road from Indio to Yuma, 118.37 miles, dated December 26th, 1877 (producing).

Mr. Redding—Defendants offer in evidence the report of the United States Commissioners, showing the examination of the completed road of the fifth section of 118.37 miles of the Southern Pacific Railroad Company, one of the defendants herein, dated December 26th, 1877, from Indio to Yuma.

(Same objection.)

(The report of the United States Commissioners, dated December 26th, 1877, showing an examination of the fifth section of the completed road of the Southern Pacific Railroad Company, one of the defendants herein, from Indio to Yuma, is marked by the Special Examiner "Defendants' Exhibit before the Special Examiner, No. 33.")

Q. Are these the same reports that are recited in the preamble to the patents issued to the Southern Pacific Railroad Company, one of the defendants herein, for its lands to the effect that the Commissioners appointed by the President reported the construction of the road to the President?

(Same objection.)

A. They are duplicate originals of the same reports.

Q. Were these reports accepted by the President of the United States?

(Same objection.)

A. They were, and by the Secretary of the Interior.

Q. From what source have you obtained your information that these reports were accepted by the Interior Department and by the President?

(Same objection.)

A. Letters in some cases from the attorneys of the company in Washington and in other cases direct from the Interior Department.

Q. Can you produce any letters from the Interior Department to your department showing the acceptance of these reports or any of them?

(Same objection.)

A. I presume I can by making a search for them; the fact that the patents issued is evidence that the reports were accepted, because under the law they could not be issued unless the roads had been examined by the Interior Department and the report accepted.

Mr. Call—I move to strike out the answer of the witness.

Mr. Redding—In Patent No. 1, the following recital occurs. I am now reading from Defendants' Exhibit before the Special Examiner, No. 9: "And Whereas, official statements bearing dates May 11th, 1874, and November 13th, 1875, from the Secretary of the Interior, have been filed in the General Land Office, showing that the Commissioners appointed by the President under the provisions of the 4th section of said Act of July 27th, 1866, have reported to him that the line of said branch railroad and telegraph line from a point in the northwest quarter of Section 3, Township 2 North, Range 15 West, San Bernardino Meridian to a point in the southwest quarter of Section 4, Township 3 South, Range 1 West, to San Gorgonio Pass, making 100 miles of road constructed and fully equipped in the manner prescribed by the said Act of July 27th, 1866;

" AND, WHEREAS, It is further shown that copies of the reports of said Commissioners have been filed in the Department of the Interior with copies of the order of the President of the United States, dated May 9th, 1874, and November 8th, 1875, of the completion of the above portions of said railroad and telegraph line." Do the recitals in this patent referring to the

reports of these Commissioners refer to the reports that you have testified to now, and which have just been introduced in evidence?

(Same objection, and the further objection that parole testimony of the witness is incompetent, showing the legal effect of a written instrument such as the pretended patent or report of the Commissioners, and further that it is calling for the opinion of the witness upon matters of law.)

A. They do.

Mr. Redding—Q. Do you know as a fact whether any other railroad has been built from Tehachapi by the way of Los Angeles to Fort Yuma than the railroad the construction of which was reported upon by these Commissioners, of which you were Secretary?

(Same objection.)

A. There has not.

Q. Have you ridden over this railroad from Tehachapi by the way of Los Angeles to Fort Yuma since its completion and since the report of these Commissioners?

(Same objection.)

A. I have, many times.

Q. Do you know whether it is being used at the present time for the purpose of conducting the United States mails?

(Same objection.)

A. I do; from having seen United States officials put the mail on board the cars systematically.

Q. Have you ever been in any of the United States postal cars on this road?

(Same objection.)

A. I never have; I have seen them from the outside and looked in, but I have never been in one.

Q. Have you seen the United States mail bags in those cars and being delivered into them and off of them?

(Same objection.)

A. I have.

Q. How, lately?

(Same objection.)

A. Two or three days ago.

Q. And extending back what period of time?

(Same objection.)

A. Extending back to very nearly the first time that the road was in complete operation.

Q. Do you know whether or not the road is used for the purpose of transporting munitions of war, military troops or any other Government paraphernalia?

(Same objection.)

A. I do not; I have seen Government troops on the cars.

Q. Do you know who forwarded the reports of the Commissioners to Washington?

(Same objection.)

A. I do; I did, not to Washington, sometimes to New York; chiefly to New York to Mr. Huntington.

Q. Will you state whether or not in each instance these reports were made after or before the road was completed over the portion reported upon?

(Same objection.)

A. The reports were made invariably after the road was completed in each particular section.

Q. State what these Commissioners did in your presence, and that you saw and knew of your own knowledge in reference to the examination of each one of the sections of the road?

(Same objection.)

A. When they came on to the ground where the road was to be examined they caused the car in which they were to be wheeled along very slowly; they frequently had the car stopped. They got off and examined such portions of the work as they thought was necessary, and usually consumed quite a long time in making the examination. They examined bridges and culverts with a great deal of care, and also in various places they counted the number of ties to the mile, and they also examined the iron.

Q. Do you know of your own knowledge that these reports are duplicate originals of those forwarded to Washington?

(Same objection.)

A. I do.

Q. Did you compare them yourself?

(Same objection.)

A. I compared them myself, and I was present when they were executed.

Q. Did you see these Commissioners sign their names to them?

(Same objection.)

A. I did, except in the case of Sturgess, at Washington.

Q. Do you know as a fact whether or not the road was finished from Tehachapi to Yuma at the time stated in the last report of the Commissioners?

(Same objection.)

A. I know it most positively that it was.

Q. Do you know whether it was equipped in a manner so as to be able to run cars of a standard gauge for Government purposes between those points, or any other purposes?

(Same objection.)

A. It seems to be so to me; I am not an engineer.

Q. Do you know whether or not the same cars that run over the lines of the Union and Central Pacific do run over the lines of the Southern Pacific Railroad Company between those points.

(Same objection.)

A. I did not observe the cars, but I do know that there are trains running backwards and forwards on them every day.

Q. Do you know whether the road is of the same gauge as the Central Pacific Railroad?

(Same objection.)

A. I do.

Q. And the Union Pacific Railroad?

(Same objection.)

A. About the Union Pacific I know nothing.

Q. Have you ever ridden from here to Omaha?

(Same objection.)

A. I have.

Q. Do you know whether the gauge of the road is the same on the Central Pacific as it is on the Union Pacific—that the same cars go over the rails?

(Same objection.)

A. I went through from San Francisco to Chicago in the same car over the Central Pacific, the Union

Pacific and the Rock Island Road from Council Bluffs.

Q. Then do you not know whether or not the gauge of the road from Tehachapi by way of Los Angeles to Fort Yuma is the same as the roads that you mention?

(Same objection.)

A. I think it is.

Q. Do you know whether it is a standard gauge road or not?

(Same objection.)

A. It is a standard gauge road, 4 feet $8\frac{1}{2}$ inches.

Q. Have you had prepared in your department a statement of the legal fees and costs paid by the Southern Pacific Railroad Company, one of the defendants in this action, to the officers of the United States in connection with the patenting of the land involved in this case?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. I have had one prepared under my immediate supervision.

Q. Can you produce it?

(Same objection.)

A. Here it is (producing).

Q. Is this the original from your office?

(Same objection.)

A. It is.

Mr. Redding—Defendants offer in evidence an original statement made in the Land Department of the Southern Pacific Railroad Company in the handwriting of employees of the Land Department of the

Southern Pacific Railroad Company, which statement we offer for the purpose of showing what the amount of fees are that have been paid by the Land Department for the purpose of patenting these lands.

Mr. Call—I object to the admission of the document in evidence on the ground that it is incompetent, immaterial and irrelevant, and not the best evidence.

(A press copy of the statement of the legal fees and costs paid by the Southern Pacific Railroad Company to officers of the United States in connection with the patenting of the lands involved in this case is marked by the Special Examiner, "Defendants' Exhibit before the Special Examiner, No. 34.")

Mr. Redding—Q. Does this statement here offered set forth these facts?

(Same objection.)

A. This is a press copy of the original statement, and it does set forth truly the amounts that have been paid by the Southern Pacific Railroad Company to the Government of the United States for surveying fees and issue of patents.

Q. Was this excerpt a statement from your books, made under your supervision?

(Same objection.)

A. It was made under my immediate supervision.

Q. Do you know that it is correct?

(Same objection.)

A. It is entirely correct.

Q. Does it correctly state from the records of your office the amounts paid for said purposes?

(Same objection.)

A. It does.

Mr. Redding—I will state that we will have the original, which is on file and attached to the answer, substituted for this press copy in the same manner that we agreed to have the original of the statement of the condition of the lands substituted for the press copy. Will that be satisfactory, Mr. Call?

Mr. Call—Very well. Subject to the objections made.

Mr. Redding—Do you now state as Land Agent of this Company, one of the defendants herein, that you have made these excerpts of this statement from your books and know it to be correct?

(Same objection.)

A. I have caused them to be made, I have examined them and know them to be correct.

Mr. Redding—The defendants offer in evidence a true and literal exemplification of the map filed in the Department of the Interior, on March 24th, 1871, by the President of the Southern Pacific Railroad Company, and transmitted to the Commissioner of the General Land Office, and to that office and filed in the office of the Commissioner of the General Land Office, on April 3, 1871, and described therein as a map designating the route of said railroad branch line from Tehachapi Pass by way of Los Angeles to the Colorado River, and ask that it be marked, "Defendants' Exhibit before the Special Examiner, No. 35."

(The exemplification of the map filed in the Department of the Interior, on March 24th, 1871, offered by counsel, is marked by the Special Examiner, "Defendants' Exhibit before the Special Examiner, No. 35," and is annexed hereto.

Mr. Call—The introduction of the map is objected to upon the ground that it is incompetent, immaterial and irrelevant, and upon the further ground that it appears to be a map of general route of said railroad, and not a map of definite location, and upon further ground that the matters recited in the pretended certificate of the Acting Commissioner of the General Land Office are conclusions and not evidence of any facts, and upon the further ground that it has been finally decided in the case between the United States and the Southern Pacific Railroad Company, the record of which is on file herein, that the map filed by the Southern Pacific Railroad Company in 1871 was a map of general route, and it is now falsely attempted to be shown that the map here offered is a map something other than a map of general route, and important matters are omitted from said map.

Mr. Redding—I desire to interpose an objection to counsel's statement. Counsel has no right to state what is omitted from a map. It is only hearsay. The complainant has a right to deny the verity of this document by other evidence documentary in character properly exemplified, but not by an oral statement of counsel.

Mr. Call—We also object upon the further ground, that the letters referred to by the acting Commissioner in his certificate as accompanying this map, and the letter of the department transmitting this map, are not offered in evidence.

Mr. Redding—Mr. Call, I am just in the act of offering the letters accompanying that map, especially the order of withdrawal.

An adjournment was then taken by agreement of counsel until Wednesday, September 13th, 1893, at 10:30 a. m., with the understanding that if Mr. Redding is not through with the case which he is engaged in trying, namely, Davis vs. The Northern Pacific Railroad Company, which commences to-morrow morning, an adjournment shall be had until 2 p. m. of the same day, and if not through by 2 p. m. of Wednesday, shall be adjourned until Thursday, September 14th, 1893, at 10:30 a. m.

Wednesday, September 13th, 1893.

In accordance with the agreement of counsel upon the last adjournment, Mr. Redding, not being prepared to proceed upon Wednesday, September 13th, 1893, an adjournment was had until Thursday, September 14th, 1893, at 10:30 a. m.

San Francisco, September 14th, 1893.

DIRECT EXAMINATION OF JEROME MADDEN.

(Resumed.)

Mr. Redding—Mr. Call, in the last day's testimony it was agreed that the Special Examiner should make certified copies of the patents introduced, or so much thereof as related to the lands in controversy; therefore, if the Special Examiner ascertains that all the lands involved in this suit are confined to but four of the patents introduced, and certifies to those four patents, or the necessary portions thereof, that will conform to the stipulation, and also be in strict line of procedure as agreed upon, is not that so?

Mr. Call—I suppose that is so. I understand the witness states that only four of the patents which have been offered contain lands in suit which have been claimed to be patented.

The Witness—It has been suggested to me by the chief clerk in the Land Office of the Southern Pacific Railroad Company that all the lands in that statement which has been presented in Case 184 were contained in four of the patents which were presented here on the last day that I was examined.

Mr. Redding—The defendants offer in evidence a letter from the Department of the Interior, General Land Office, dated April 21st, 1871, addressed to the Register and Receiver, Los Angeles, Cal., which letter was sent by the General Land Office to the Register and Receiver, at Los Angeles, accompanying and transmitting with the same a map, showing thereon the line of route of the grant to the Southern Pacific Railroad Company Branch Line and the 20 and 30 mile limits of the grant from Tehachapi Pass by way of Los Angeles to the Texas and Pacific Railroad, at or near the Colorado River. This letter appears in the record of Case 68 and endorsed as Exhibit "R", also as stipulated Exhibit "G", and Master's Exhibit "132". I desire to introduce this letter in the same way that you introduced certain testimony from out of Case 68 before Mr. Lamme, in Los Angeles, although I now read the letter from the record of Case 68. I will have the original exhibit substituted therefor from the archives of the clerk in Los Angeles, in the same way that you have had others. Is there any objection to my reading this as being a copy, provided I furnish

the other, subject, of course, to your objections on the usual grounds?

Mr. Call—First I object to the introduction of it as irrelevant, immaterial and incompetent.

Mr. Redding—Do you mean the letter itself or the copy I offer?

Mr. Call—Both; and I wish to be present when any offer is made of the certified copy on file, and if that is done during these proceedings you can drop the matter for the time being. I do not want any papers put into the record in the case after the adjournment is had from the hearing before the Special Examiner.

Mr. Redding—I understand that. If you will recall what you did in Los Angeles in this case, you will remember that you took a number of exhibits from out of Case No. 68, from the records of Case 68, and introduce them in this case.

Mr. Call—Yes, they were produced before the Master in pursuance of an order of Court, and the papers themselves were there produced and offered in evidence, and not by any copy of them.

Mr. Redding—I want to introduce this copy this morning, and put the original in from the Los Angeles archives when I get it. This letter is as follows:

"DEPARTMENT OF THE INTERIOR,

General Land Office,

April 21, 1871.

Register and Receiver, Los Angeles, California:

Gentlemen:—By Act of March 3rd, 1871, Section 23, the Southern Pacific Railroad Company is authorized to construct a railroad from a point at or near Te-

hachäpi Pass by way of Los Angeles to the Texas Pacific Railroad, at or near the Colorado River, with the same grant of lands, &c., as were granted to said Company by Act of July 27th, 1866. The company having filed a diagram designating the general route of said road, I herewith transmit a map showing thereon the line of route as also the 20 and 30 mile limits of the grant to the line of withdrawal for the Southern Pacific Railroad under the Act of 1866. And you are hereby directed to withhold from sale or location, pre-emption or homestead entry, all the odd numbered sections falling within those limits. The even numbered sections within the limit of 20 miles you will increase in price to \$2.50 per acre, and will dispose of them at that price, but only under the pre-emption and homestead laws. Where pre-emption or homestead entries may have had legal inception prior to the receipt of this order, the settlers may, of course, prove their claims, either upon odd or even numbered sections, at the rate of \$1.25 per acre. This order will take effect from the date of its receipt by you, and you will please acknowledge receipt by date. The even numbered sections between the 20 and 30 miles, or indemnity limits, are not affected by this order.

Very respectfully,

WILLIS DRUMMOND,
Commissioner."

On the outside of this letter occurs the following certificate :

"DEPARTMENT OF THE INTERIOR,

"General Land Office,

"Washington, D. C., October 25th, 1889.

"I, Lewis A. Groff, Commissioner of the General Land Office, do hereby certify that the annexed copy of a letter dated April 21st, 1871, and addressed to the Register and Receiver, Los Angeles, California, is a true and literal exemplification of the original letter of record in this office.

"In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

"(Seal.)

LEWIS A. GROFF,

"Commissioner of General Land Office."

I ask that this exhibit be marked "Defendants' Exhibit before the Special Examiner, No. 36."

(The foregoing letter is considered as marked "Defendants' Exhibit before the Special Examiner, No. 36.")

Mr. Redding—You may take the witness for the present. I will introduce some more evidence when he has it prepared.

CROSS-EXAMINATION.

Mr. Call—Q. Were you in the employ of the Southern Pacific Railroad Company between the years 1871 and 1876? A. I was.

Q. What were you doing during that time for the Company?

A. I was part of the time Deputy Land Agent. Part of the time an assistant in the Company's land office.

Q. What were you doing during the year 1871?

A. I was an assistant in the Southern Pacific Railroad Company's land office, and also doing some other work outside.

Q. What other work?

A. Getting mortgages recorded, making payments of money, doing various things in connection with the properties of the Southern Pacific Railroad Company.

Q. What did you do during the subsequent years, 1872, 1873, 1874?

A. I was engaged in the same line of business.

Q. Up to 1876?

A. Up to 1875, at which time I was appointed Deputy Land Agent of the Southern Pacific Railroad Company, and held that position until May 10th, 1876, when I was appointed the Land Commissioner or Land Agent of the Company.

Q. Were you ever over the proposed line of route of the Southern Pacific Railroad Company between Tehachapi and Yuma by way of Los Angeles before the road was constructed? A. I was.

Q. By what means of conveyance did you travel?

A. By means of stage and also by private conveyance of horses and carriage.

Q. Was the railroad between those points constructed by the Southern Pacific Railroad Company direct, or was it constructed by means of the contract with the Pacific Improvement Company?

(Question objected to by Mr. Redding on the ground that it is incompetent, immaterial and irrelevant; that

it is immaterial in that it makes no difference whether the Southern Pacific Railroad Company had a corps of engineers in its own employ or whether it employed a corps of engineers belonging to some other corporation, or some other employees.)

A. That I do not know.

Mr. Call—Q. Don't you know that in point of fact the Pacific Improvement Company constructed that railroad?

(Same objection).

A. I have heard something of that kind, but in point of fact, I do not know.

Q. Do you not know that the records of your Company show that to be the fact?

(Same objection.)

A. I do not, because I have nothing to do with those records.

Q. Do you know when the first section of the road was completed? A. I do.

Q. At what time?

A. On April 15th, 1874, the first section of the road was completed, and the United States Railroad Commissioners examined it.

Q. I believe you testified on your direct examination that the Treasurer, or some officer of the Southern Pacific Railroad Company was paying out money for the construction of the road which you saw him pay out in the construction?

A. I did; I saw him pay out money.

Q. Was that paid to the Pacific Improvement Company or to workmen other than those engaged on the road?

(Same objection.)

A. When I saw them, it was paid direct to the men.

Q. What men was it paid to?

(Same objection.)

A. Men along the line of the road; I do not remember their names now.

Q. Who did you say paid it?

A. Mr. Hanford, or one of his deputies.

Q. What was Mr. Hanford's connection with the company?

A. He was Paymaster of the Company.

Q. Of what company?

A. Of the Southern Pacific Railroad Company, I presume.

Q. Was he not also connected with the Pacific Improvement Company? A. No, sir.

Q. Was he not Paymaster of that road?

A. No, sir; not to my knowledge.

Q. But you think he paid the money out for the Southern Pacific Railroad Company?

A. I think he did.

Q. Do you not know that all the money paid out in the construction of that road was paid out through the Treasurer of the Southern Pacific Railroad Company on a written contract between that company and the Pacific Improvement Company?

(Same objection, and the further objection that it is not the best evidence.)

A. I do not. About any contracts that were made by the Southern Pacific Railroad Company with anybody, I know nothing except from hearsay; I never

had access to any of the papers connected with any of those contracts, and I know nothing at all about them.

Q. I believe you testified that this exhibit which is marked in this case "Defendants' Exhibit before the Special Examiner, No. 2," contains a correct statement of the sales by the Southern Pacific Railroad Company of lands; is that so?

A. In so far as they appear there, yes.

Q. Did you go over the matter yourself personally.

A. I superintended it.

Q. Did you examine it yourself personally, item by item? A. No, I did not.

Q. Who made it out?

A. It was made out by Mr. Cummins and one or two other men in the Land Department of the Southern Pacific Railroad Company under my direction and under my supervision, and I am so sufficiently impressed with its correctness that I am willing to swear to it.

Q. You are willing to take chances on it.

Mr. Redding—I move to strike that out as a remark of the counsel.

Mr. Call—That is what I understood; that the witness is willing to take chances on its being correct and swearing it is correct.

Mr. Redding—Q. Are you taking chances on this, Mr. Madden? A. I am not.

Mr. Call—Q. I understood you to say that you did not compare it yourself, item by item.

A. I have not compared it myself item by item, but I am morally and positively sure that it is correct.

Q. Can you read it? A. I read the original.

Q. Can you read this copy which you have just sworn is correct, if you can, please read the first item? (Exhibit "2" shown witness.)

A. What I intend to swear is that the original from which this press copy was taken is entirely correct.

Q. Please state what the first item is there on this exhibit?

A. That seems to be rather illegible—I do not think I can read it.

Mr. Redding—The respondents have stated that they will substitute the original which is now on file attached to the answer, as an exhibit in lieu of the press copy.

Mr. Call—I wish to say now that I require a legible copy to be produced before the Examiner in order that I can cross-examine the witness in reference to it.

Mr. Redding—That is why I suggest that we obtain from the Clerk of the Court of the Southern District, the original.

Mr. Call—Q. Then you cannot read the memoranda on that exhibit?

A. Some portions of it, I cannot.

Q. Can you read any of it? A. Yes, sir.

Q. What can you read—read a portion of it that you can read?

A. On page 18, taken at random, I read: "8050, August 18th, 1887, J. H. Painter, Pasadena, Cal. All of Section 19, Township 2 North, Range 12 West, San Bernardino Meridian, 640 acres, unsurveyed, granted, not selected, Southern Pacific Railroad Company deed has not been issued, as the land is unpatented."

Q. What does that item mean?

A. It means that in Contract 8050, dated August 18, 1887, J. H. Painter, of Pasadena, Cal., made a purchase from the Southern Pacific Railroad Company of all of Section 19, Township 2 North, Range 12 West, San Bernardino Meridian, and that the area is 640 acres; that it was unsurveyed land within the granted limits and that it was not selected, and also that the deeds of the Southern Pacific Railroad Company have not been issued to J. H. Painter or his assigns because the land is unpatented.

Q. How did he purchase that land then if the deed has not been made? A. I suppose he paid for it.

Q. Do you know whether he did or not?

A. I can tell immediately; if you will permit me to go upstairs and examine the cash book.

Q. I wish you would look and see what he paid for it and what evidence in writing there was as to his purchase of that contract?

A. They have a duplicate contract upstairs. They have also an account current with him in regard to that transaction.

Q. Will you produce the duplicate contract?

A. Yes, sir.

(At this point the witness was temporarily withdrawn, and the testimony of Charles F. Crocker was taken, and the same appears in this record immediately following the close of Mr. Madden's testimony.)

(A recess was then taken by consent of counsel until 2 p. m.)

Thursday, September 14, 1893, 2 p. m.

CROSS-EXAMINATION OF JEROME MADDEN.

(Resumed.)

The Witness—I made an examination in the land office of the Southern Pacific Railroad Company regarding its Contract No. 8050 to J. H. Painter, for all of Section 19, Township 2 North, Range 12 West, San Bernardino Meridian, and I find that on August 18th, 1887, a contract was issued to him, a credit contract, and that he only made the first payment on it. That a suit for foreclosure was commenced on or about December 2nd, 1890. Judgment was taken by default, and on it being represented to Judge McKinley that Painter was dead, the judgment was set aside March 7th, 1893, and Mr. J. D. Redding, the Southern Pacific Railroad Company's counsel, dismissed the suit and brought a new one against M. D. Painter, the administrator of the estate of the deceased, and that also said Contract 8050 is perhaps an exhibit in that suit in Los Angeles.

Mr. Redding—I will state, Mr. Call, that it is filed in the case. You happened to call for a contract which was in evidence in a suit between the vendor and the owner of the land. If you will ask about some other contract, undoubtedly it can be produced, unless it happens to be in the same category.

Q. Do you mean to say the original contract was filed?

Mr. Redding—Yes; there are duplicate originals in every instance. One is held by the Railroad Company and the other given to the purchaser.

Q. Mr. Call—How did you come to file the original?

Mr. Redding—Offered it as evidence in the case.

Mr. Call—And it is there now, then?

Mr. Redding—It is there now; but there are others here by the myriad, which you can get in five minutes by asking for them, if they are not involved in some similar suit.

Mr. Call—Q. What lands, if any, has the Southern Pacific Railroad Company deeded or made a deed for, which have not been patented?

A. They have never made any deeds to my knowledge at present for lands that are unpatented, except where in foreclosure suits of contracts for sale of lands it was necessary to present a deed in court to the defendant for the purpose of obtaining the foreclosure.

Q. Were any of those deeds delivered?

A. Those deeds were not delivered by me, but I believe they were delivered by Mr. Redding, the company's attorney.

Mr. Call—Did you deliver any of them, Mr. Redding?

Mr. Redding—Yes, a great many of them.

Mr. Call—I would like to have Mr. Madden furnish me a list of the lands which have been deeded, which have not been patented?

The Witness—I will do that.

Mr. Call—And the deeds of lands which have been deeded and the deeds delivered, not those deeds which you have not delivered.

Mr. Redding—You mean a list of the deeds delivered, not the deeds themselves?

Mr. Call—Yes; a list of the lands which have been deeded and the deeds delivered.

The Witness—Some of those I understand have been delivered and they have not come back into my office yet. They either have been delivered or are in process of delivery.

Q. Does this list contained in Exhibit "No. 2," to which you have referred, contain all of the lands embraced in this suit, or does it contain only those lands to which you have made contracts of sale?

A. It contains all the railroad lands involved in this suit 184.

Q. On page 9, of Exhibit "2," there appears to be Contract No. 8949, dated August 18th, 1887, to Calvin Hartwell and Byron O. Clark, Pasadena, Cal.; is that a contract of sale or has a deed been made of that land?

A. The Southern Pacific Railroad Company's deed has not issued. The land is unpatented.

Q. How much has been paid on that contract?

A. I could not tell you without reference to the books.

Q. Have you in your possession the original duplicate contract? A. I think I have.

Q. I will ask you to produce it.

A. Shall I produce it now?

Mr. Call—You might wait a moment and we will get some other papers at the same time.

Q. Of the lands involved in this suit which are embraced within the patents which have been offered in evidence, how many acres of land and what tracts have been deeded by the Company?

A. I have made no calculation with regard to that; I can make a calculation.

Mr. Redding—Q. Is not the answer of that question found in the exhibit? A. No, it is not.

Q. I did not mean the sum total; but does not the exhibit show the amount of lands that have been deeded and the descriptions and to whom?

A. It states the fact; for instance, here is a piece of land which is duly selected by the railroad company and which was included in Patent No. 6. That is not deeded; wherever a deed has been issued on land that has been patented within those limits it is marked here.

Q. You mean the land in this suit?

A. The land in this suit.

Mr. Call—I would like to have the witness produce a statement showing that of the lands involved in this suit which are included within the patents which have been introduced, what tracts have been deeded and what has been received by the company upon each tract set opposite the description.

Mr. Redding—I object to that as being immaterial in that the exhibit attached to the answer, a press copy of which is now before the witness, shows that very statement which you desire. Now, you wish the witness to make a statement of the same thing in condensed form; in other words, to pluck out of that large exhibit certain specified information for you. The respondents respectfully submit that the exhibit itself does contain that information.

Mr. Call—I cannot discover it in the statement, what amount has been paid to the railroad for each contract which has been deeded among those which are embraced within the patents.

Mr. Redding—Q. You can furnish that, can you not?

A. It says here, "amount sold for"; now, with regard to that particular piece, here are the amounts which they are sold for right down here; I did not notice it before; do you want to know how much was received on that one?

Mr. Call—I want it in a summarized form so we can get at it in some competent way. What the total was which had been received for each tract which had been deeded of the lands which are embraced within those patents so far as involved in this suit.

Mr. Redding—You want, I understand, that Mr. Madden furnish a statement of moneys received for deeded lands patented, involved in this suit—the sum total?

Mr. Call—Yes, the sum total.

The Witness—How soon do you want it?

Mr. Call—As soon as you can get it during the progress of the examination.

Mr. Redding—During the hearing before this Examiner in San Francisco in the next two weeks.

The Witness—I shall furnish you with a statement.

Mr. Call—Does that Exhibit No. 2 show what has been paid upon each contract of sale which has not been executed?

A. It does not. It shows merely what the lands have been sold for or agreed to be sold for.

Mr. Call—I ask the witness to produce a statement showing what has been received upon each contract which has been executed.

Mr. Redding—Do you mean the sum total?

Mr. Call—No; what has been received for each contract which has been made by the Railroad Company together with the whole amount of the purchase price.

The Witness—I will furnish you such a statement. Mr. Call, do you want these names here, or will a reference to the page be enough?

Mr. Call—It might be better to give the name for purposes of identification.

The Witness—Because in this exhibit here, explanations are quite extended in some instances. Will it be necessary to make all these explanations on the statement that you wish me to furnish you?

Mr. Call—All that I wanted was to know what had been received upon each contract and what the total amount of consideration was and the name of the party to whom it was made?

The Witness—Very well.

Mr. Call—Q. You have handed me the original duplicate contract from the Railroad Company to Calvin Hartwell and Byron O. Clark; state whether you use any other form of contract than this in the sale of these lands?

A. There is another form of contract where the lands are fully paid for; that which you have is a partial credit contract.

Q. What is the other contract?

A. The other contract is, that in consideration of having received the purchase price of the land, the full amount, as soon as the patent is received, a deed will be made.

Mr. Call—I will ask you, Mr. Madden, to produce one of the original contracts of the kind last referred to,

which has been made to any of the parties mentioned on Exhibit No. 2.

The Witness—Do you want me to produce that now?

Mr. Call—if convenient, you might send and get it now.

The Witness—Do you want it for land within those boundaries?

Mr. Call—Yes; You may pick one out if you have any way of telling from this exhibit.

(Witness produces book of contracts.)

Mr. Call—Q. Take the first contract referred to, what number or form do you call that?

A. We have no particular form; there are only two forms, one is fully paid and the other is a partial credit contract.

Q. The first contract is a contract of unpatented lands, where a sale is made upon credit not fully executed. Is that correct?

A. The contract is fully executed, but where the land is unpatented land sold on contract, that form of contract is given.

Q. That is this contract is executed but no deed has been made and only part of the purchase price paid, is that right? A. That is right.

Q. State what that contract is between, what parties?

A. This contract is numbered 8049, and is made by the Southern Pacific Railroad Company acting through myself as Land Agent, to Calvin Hartwell and Byron O. Clark, of the County of Los Angeles, for all of Section No. 27, in Township 2 North, Range 12 West, San Bernardino Meridian.

Q. Is it executed by both parties?

A. It is signed on the part of the company by myself as the Land Agent of the Southern Pacific Railroad Company and by Frederick Madge, Secretary pro tem. of the Southern Pacific Railroad Company, and it is also signed by the purchasers of the land, Calvin Hartwell and Byron O. Clark.

Mr. Call—I offer that contract in evidence and ask that the same be marked "Exhibit before the Examiner A".

(Contract No. 8049, between the Southern Pacific Railroad Company and Calvin Hartwell and Byron O. Clark, dated August 18, 1887, is marked by the Special Examiner "Exhibit before the Examiner 'A'", Stephen Potter, Special Examiner", and a certified copy thereof is attached hereto.)

Mr. Call—I am willing to accept in lieu of this original a copy certified by the Examiner.

Q. State what this contract is?

(Handing witness another contract.)

A. It is Contract No. 5101, dated 2nd January, 1886, fully paid from the Southern Pacific Railroad Company to L. L. Bradbury, for lots 1 and 2 in the northwest quarter, lots 3 and 4 in the southwest quarter, east half of northwest quarter and west half of northeast quarter of Section 19, in Township 1 North, Range 10 West, San Bernardino Base and Meridian, containing 316.18 acres, executed on the part of the Southern Pacific Railroad Company by Jerome Madden, its Land Agent, and J. L. Willeutt, its Secretary, and signed by L. L. Bradbury.

Mr. Call—I offer this contract in evidence and ask that it be marked "Exhibit before the Examiner 'B.'"

(Contract No. 5101, dated January 2nd, 1886, between the Southern Pacific Railroad Company and L. L. Bradbury, is marked by the Special Examiner, "Exhibit before the Examiner B, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

Mr. Call—Q. You have produced two contracts; you say that those are the two forms which are used; state what, if any, other form of contract is used in sales by the company to the parties named in Exhibit No. 2?

A. There is another form of fully paid contract where the land is patented on which the deed is issued immediately upon the execution of the contract and payment of the money.

Q. State whether any sales have been made by the company to any of the persons named in Exhibit No. 2, of unpatented land in any form of contract other than those which we have introduced in evidence?

A. The three forms of contract which I mentioned are the only ones in use in the Southern Pacific Railroad Company's Land Office.

Q. The question I asked was whether any sales had been made by the company to any of the parties referred to in Exhibit No. 2, of unpatented lands on any other kind of contract or any other kind of form than those two we have offered in evidence?

A. I believe there was one or two sales of timber land, the form of contracts for which varied slightly from the form that I have shown you as being that used for unpatented lands; it was only a variance sufficient to meet payments in a different way and at shorter times.

Q. But the terms and conditions were substantially the same?

A. The terms and conditions were substantially the same.

Q. I understood you to say that the deeds had not been made of any lands except those which had been patented and embraced within those patents excepting in cases where there was a foreclosure of the contract in court and then there the deed was offered.

A. That is true.

Q. And some of those deeds have been delivered and some have not, I suppose?

A. That is also true.

Q. In the majority of cases where such deeds have been made, has not the case proceeded to final decree in favor of the Company on foreclosure so that the deed was not delivered, but returned?

(Question objected to by Mr. Redding as incompetent, and not the best evidence on that point.)

A. In many cases the deeds have been returned and foreclosure has been entered by the Company.

Mr. Call—Q. Do you keep original copies, or copies, of the deeds which are made upon those foreclosure suits?

A. No; those that were returned to me I have in the office.

Mr. Call—I have asked you to furnish a list of the lands and persons to whom the deeds have been made of those unpatented tracts where the deeds have been delivered to the party, where suit has been commenced, the amounts paid for the patented lands sold, and the name of the party and the number of the con-

tract, and I also ask the whole amount which has been actually paid to the Company on the unpatented lands, give the number of the contract, the amount paid and the contract price opposite—that will be sufficient identification.

Q. In these contracts of sale which are offered in evidence, marked Exhibits before the Examiner A and B, I notice that it is stated in those contracts that in the event that the land shall not be patented to the Company by the United States, the contract shall be null and void as to such tracts; what was the object and idea in putting that in the contract?

(Question objected to by Mr. Redding as immaterial, irrelevant and incompetent; immaterial in that the contract itself specifies what the intention of the parties was, and that any evidence with reference to the intention of the parties is immaterial and incompetent at this time, because all of the intentions are merged into the terms of the contract, which speak for themselves; and the further objection that it is not the best evidence, and calls for the conclusion of the witness.)

A. That clause was put in the contract in consequence of a consultation that I had with the Board of Directors of the Southern Pacific Railroad Company, in which I represented that the question of title to those lands was brought up in Los Angeles, that many persons there believed that in consequence of the overlap of the Atlantic & Pacific withdrawal, the Southern Pacific Railroad Company's title to it might, by some chance, be set aside, and under those circumstances they were unwilling to buy unless there should be

some assurance that the company would give back to them the money which they paid in the event of the company not being able to get a patent; and the Board of Directors said that although they had perfect confidence in the Southern Pacific Railroad Company's title being good, still, at the same time, to please the purchasers they were willing to put such a clause in as appears in the contract, agreeing that in case a patent should not be received by the Southern Pacific Railroad Company the money received would be given back.

Q. In those forms of contract which have been offered in evidence, what portion of it is printed and what is written; what I want to get at is, in order to save transcribing all of these contracts, I want to see what portion is filled in in long hand and what is printed?

A. The blank contracts were printed from the same types; where there is a difference in the description the contracts differ in that regard.

Q. And in the name of the purchaser?

A. And in the name of the purchaser.

Q. And in the amount of the purchase price?

A. And in the amount of the purchase price.

Q. And in the number of the contract, and in the date of the contract?

A. In the number and date of the contract.

Q. And the other matter is printed?

A. No; there is also a matter relating to right of way for the road.

Q. That is, in some cases the company reserves right of way and in some it does not; is that correct?

A. That is correct.

Q. Did you send for blank forms of those contracts a moment ago? A. I did, at your request.

Q. Please produce them, so that I can examine them? A. They will be here in a few minutes.

Mr. Redding—Q. Will you also produce the form of contract for patented lands?

A. Do you mean fully paid contracts?

Mr. Redding—An executory contract for patented lands.

The Witness—There are two forms of those.

Mr. Redding—Produce both forms?

A. I will produce them.

(Witness produces two blank forms of contracts.)

Mr. Call—Q. I will ask you if these blank forms which you now produce correspond as to their printed portion with the two executed contracts which have been introduced heretofore?

A. They do.

Q. I understand you to say those two forms of contracts are the only ones upon which you have made sales except as to patented lands?

A. That is correct.

Mr. Call—I offer these two forms in evidence, and ask that they be marked Exhibits before the Examiner "C" and "D."

(The two forms of contracts produced by the witness and introduced by counsel in evidence are marked by the Examiner respectively, "Exhibit before the Examiner C, Stephen Potter, Special Examiner," and "Exhibit before the Examiner D, Stephen Potter, Special Examiner," and the same are annexed hereto.)

(An adjournment was then taken by consent of counsel until Friday, September 15th, 1893, at 10:30 A. M.)

San Francisco, Friday, September 15, 1893.

CROSS-EXAMINATION OF JEROME MADDEN.

(Resumed).

Mr. Redding—Q. I understand you desire to make an explanation in reference to an answer to one of the questions put by the Government's counsel yesterday?

A. I do.

Q. On what page is that question found in the Special Examiner's record?

A. It is the last question on page 127.

Q. What is the explanation you desire to make?

A. I desire to say that I gave the answer to that question under an absolute misunderstanding of the facts, having in my mind at that time the overlap of the Atlantic and Pacific Railroad with the main line, that is to say, the main line of the Southern Pacific Railroad Company, and a great portion of the Atlantic and Pacific Railroad line goes over the same territory; the answer, as it stands on page 128, is absolutely erroneous, and not in consonance with the facts in the case; the facts are that the Southern Pacific Railroad Company at one time, up to 1883, did not sell lands unless a patent was received for them; in 1880 and previous thereto there were some patents issued to the Company, and between that period and 1891 no patents were issued on the main line except one for about twenty-five hundred acres and another one for one hundred and sixty acres.

Mr. Call—Q. Explain what you mean by the main line and the branch line?

A. By the main line I mean the line of road that goes from San Jose southward to Tres Pinos, thence to Alcalde, thence to Goshen, thence to Mojave, and thence to the Needles on the Colorado River, under the grant of 1866; by the branch line I mean the line commencing at Mojave, going thence south by the way of Los Angeles and San Gorgonio Pass to Fort Yuma on the Colorado River.

Q. Why do you say commencing at Mojave, is that upon the line?

A. Then you can say at or near Tehachapi Pass, which is the language of the statute; towards the close of 1883, in consequence of not receiving patents for railroad lands, the business of the Southern Pacific Railroad Company's Land Office had very nearly come to a standstill, and under the circumstances I called the attention of the Board of Directors to the fact. I said to them that the public had associated the patent with title, and in consequence of that, the patentees not having been received, they imagined that the title was not good, although a great deal of the lands that they sought to buy were within the twenty-mile or grant limits of the grant; thereupon the Board of Directors, in order to give persons full assurance of title for those lands on the main line, lying mainly in Fresno, Tulare and Kern counties, directed that a form of contract for a deed be drawn up, giving them assurance that the patent would be received and title given or the money refunded, which was accordingly done, and the Southern Pacific Railroad Company's

Land Office commenced using this form of contract in the latter part of 1883, and they have ever since been in use.

Q. Then the real purpose was to assure these parties that if the company did not get title from the Government that their money would be refunded so that they would have confidence to go into the contract?

(Question objected to by Mr. Redding as immaterial, irrelevant and incompetent; immaterial in that the contract itself specifies what the intention of the parties was, and that any evidence with reference to the intention of the parties is immaterial and incompetent at this time, because all of the intentions are merged into the terms of the contract, which speak for themselves; and the further objection that it is not the best evidence, and calls for the conclusion of the witness).

A. No; they seemed to think that a patent was the title.

Q. That was the object, to assure them that they would not lose anything by the operation if the Company did not get title, was it not?

(Same objection).

A. The contract will speak for itself in that regard; these contracts had no relation to the lands involved in Case 184 at that time, because there was no question regarding that in California, so far as I understand, and after the contracts were put into use they were used for the business of the branch road as well as for that of the main line.

Q. State what the reason was that that clause was put into those contracts, or that they were executed in

that way, the clause I refer to being if the railroad failed to secure a patent for the lands that the contracts should be off and the money refunded?

(Same objection.)

A. I cannot give you any further information than is conveyed in the clause of the contract itself.

Q. What was your purpose in it?

(Same objection.)

A. The purpose is set forth in the paragraph containing it; I cannot explain it to you any better than it is here, except possibly by reading it.

Q. That states what the contract was; I asked what the object was of putting it in?

(Same objection.)

A. The object was to let the persons know that the railroad company had title—that they, the railroad company, were confident of it.

Q. That they would get the title?

(Same objection.)

A. Well, the idea was at the time that they had the title; they were willing to give any assurance of title, because there were a great many of the lands at that time which were offered for sale by the company that were within the twenty miles or granted limits of the railroad, the question of the title to which could not be raised at all.

Q. I believe you said you were a Deputy Land Agent for the Southern Pacific Railroad Company from 1871 to 1876?

A. I said I was a Deputy Land Agent from 1875 to 1876.

Q. What were you before that?

A. I was an assistant in the Land Office and also I was engaged in the prosecution of other outside business regarding the properties of the Southern Pacific.

Q. Didn't you know, and don't you know now, that from 1872 up to nearly 1874, there was a controversy and litigation between the Southern Pacific Railroad Company and the Atlantic and Pacific Railroad Company regarding these overlapping lands pending in the Interior Department?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant; incompetent, that the testimony of the witness is not the best evidence; immaterial, in that it in no wise refers to the present litigation, nor is it proper cross-examination, nor have the matters mentioned in that question anything whatever to do with the subject matter of this litigation; irrelevant, for like reasons.)

A. I knew that there was a grant of lands to the Atlantic and Pacific Railroad Company, and that a great portion of it went over the same territory embraced within the withdrawal for the main line of the Southern Pacific Railroad Company; I had heard that there was a contention in Washington relating to those lands, but did not know anything of the details in this State.

Mr. Redding—I move to strike out the answer of the witness as being hearsay and entirely incompetent.

Mr. Call—Q. Didn't you know that there was also an overlap between the Atlantic and Pacific grant and the Southern Pacific Branch Line grant of 1871?

(Same objections, and the further objection that the question of the counsel is misleading, intending to

put into the mind of the witness, and into his answer a legal conclusion that there was a land grant to the Atlantic & Pacific Railroad Company affecting lands in the State of California.)

A. It was not considered that the grant to the Atlantic & Pacific was an overlap of that to the Southern Pacific Railroad Company, because it crossed it at right angles.

Q. Referring to your Exhibit No. 2, which you have testified to as being correct, regarding the sales made by the Southern Pacific Railroad Company, or lands contracted to be sold, I read at the top of page 1, "Amount sold for" "surveyed," "A. P. R. R." what does that mean?

A. It means that they are within the limits which you claim to be limits of the Atlantic & Pacific Railroad, and they are also within the limits of what the Southern Pacific Railroad Company claims to be within its limits.

Q. Did you not know that, when you made these contracts of sale?

(Question objected to by Mr. Redding as incompetent and immaterial, not the best evidence, and calling for a conclusion of the witness.)

A. I knew that they were within the limits of the withdrawal for the Atlantic & Pacific Railroad Company, but inasmuch as the road of that Company crossed the Southern Pacific line at right angles, and inasmuch as the Atlantic & Pacific Railroad was not built, it was considered that all these lands belonged to the Southern Pacific Railroad Company.

Q. Do you know what lands are covered by the overlap of the two grants?

(Same objection.)

A. I cannot remember all of them, but I can tell by refreshing my memory; I can say, generally, yes.

Q. Have you got maps of the overlap?

A. I have.

Q. How long have you had them?

A. The detailed maps were made since the question was raised in Case 68, I think.

Q. There was offered in evidence during your direct examination a map by Mr. Redding, which has been marked "Defendants' Exhibit before the Special Examiner, No. 5." Where did you get that map from?

A. This is the first time I ever saw it.

Q. You never saw it before?

A. I never saw that map before.

Mr. Redding—That map was sent to me by the Interior Department.

Mr. Call—in pursuance of your request?

Mr. Redding—Yes, sir.

Mr. Call—Was it sent direct to you?

Mr. Redding—Yes, sir; certified.

Mr. Call—Have you the letter of transmittal?

Mr. Redding—I may have.

Mr. Call—I would like to see it, if you will permit.

Mr. Redding—if I have it, I will be very pleased to show it to you.

Mr. Call—Q. Are you familiar with the line of the Southern Pacific Railroad from Mojave by way of Los Angeles to Yuma?

A. I can only say that I have seen the line several times when I rode over it in the cars; with regard to

its courses and distances, and all that sort of thing. I have no knowledge, because I am not an engineer, and had nothing to do with it in that capacity.

Q. Did you not testify something about your acquaintance with that road and the frequent number of times you had been over it and the gauge of the road? A. Yes, sir.

Q. And where it was built to and from?

A. Yes, sir; I testified to that; since the commencement of work upon the road and before the commencement of work I have been over the ground where the line now is.

Q. When was the road completed to the Colorado River?

A. The road was completed to the Colorado River on the 26th of December, 1877.

Q. Was there a railroad running from the Colorado River east at that time? A. No, sir.

Q. Is there a railroad there now? A. Yes, sir.

Q. What railroad is it?

A. I think it is called the Southern Pacific Railroad of Arizona, and the Southern Pacific Railroad of New Mexico.

Q. Who owns the railroad?

(Question objected to by Mr. Redding as incompetent, calling for hearsay, and not the best evidence).

A. I do not know.

Q. Who operates the railroad?
(Same objection.)

A. I do not know.

Q. Have you ever ridden over it?
A. Yes, sir.

Q. Have you ridden over it several times?

A. I have ridden over it several times.

Q. How did you travel on it; did you have a pass or did you pay your fare?

A. I am an employee of the Company, and as such I have free transportation over the Company's lines, it being necessary in the prosecution of my business.

Q. What Company?

A. The Southern Pacific Railroad Company of California.

Q. Then did you travel on that pass over this road east from Yuma?

(Question objected to by Mr. Redding as not being proper cross-examination, referring to a Railroad Company outside of the State of California).

A. A pass was not required, because I was well known; sometimes I traveled in the pay car.

Q. You did pay your fare then?

(Same objection).

A. I did not pay my fare.

Mr. Redding—I move to strike out the questions and answers upon the ground that the same are simply offered to encumber the record, and irrelevant, and constitute an impertinence before this Court in Equity.

Mr. Call--Q. Then it was operated by the Southern Pacific Railroad Company, was it?

(Same objection, and upon the further ground that the testimony is incompetent, calling for simply the opinion of the witness, hearsay, and not the best evidence.)

A. I do not know who the owners of the Southern Pacific Railroad Companies of Arizona and New

Mexico are. I have never seen their charter nor any papers belonging to those organizations, and I know nothing whatever about who owns them.

Q. When was that railroad built east of the Colorado?

(Question objected to as incompetent, immaterial and irrelevant, and having nothing whatever to do with the case.)

A. It was, I think, as far as the Rio Grande, to which place I went; my memory is that it was in 1884, although it may be a little later than that.

Q. It was not built then until some years after the Southern Pacific was built into Yuma?

(Same objection.)

A. No sir, it was not.

Q. Did the Southern Pacific at Yuma connect with any railroad there at the time these Commissioners' reports were made?

(Same objection.)

A. I did not see any railroad there at that time.

Q. You would have known it if there was one there?

(Same objection.)

A. Yes, sir; there was no railroad at Yuma, coming from the East, at that time.

Q. In your direct examination you testified in regard to certain fees that were paid, as shown by an exhibit that has been marked "Defendants' Exhibit before the Special Examiner, No. 34;" how were those fees paid, were they paid by you personally, or paid by other persons in your employ?

A. Part of them were paid by me personally; in fact, all of them that were incurred here in California were paid by me personally.

Q. Who did you pay them to?

A. I paid them to the Sub-Treasurer of the United States at the Sub-Treasury in San Francisco.

Q. What were they paid for?

A. Costs of surveying and office work in the United States Surveyor General's office.

Q. What proportion was paid by you and what proportion by others?

A. Mr. Henry Beard, the Southern Pacific Railroad Company's attorney in Washington, or men in his employ, paid the costs of conveyancing and issuing the patent.

Q. How do you testify that he made payments. Were you there to see them made?

A. Excuse me; I paid here the surveying fees, and I also paid those of the Register and Receiver at all the United States Land Offices, that is Los Angeles; I paid them by paying cash into the United States Treasury in San Francisco for the Surveyor General's fees, and by sending check to Los Angeles, or coin, to be paid to the Register and Receiver.

Q. Did you take receipts for those payments?

A. I did.

Q. Have you got those receipts?

A. Those receipts are in the office of the Treasurer of the Southern Pacific Railroad Company.

Mr. Call—I ask you to produce those receipts before the Examiner during the progress of this examination.

Q. Did you pay fees on all those lands, or only on certain tracts of land?

A. My memory is that I paid on all of them, so far as they were paid, also I got from the United States Assistant Treasurer at the sub-treasury, receipts in triplicate, one of which I delivered to the United States Surveyor General, the other I sent direct to the Interior Department, and the other I filed in the treasury of the Southern Pacific Railroad Company; the costs of conveyancing were paid by Henry Beard in Washington.

Q. How do you know that he paid those?

A. Because I received a letter from Mr. Tweed in New York to the effect that he had paid them.

Mr. Call—I move to strike out the statements that the fees were paid.

The Witness—It is a matter of record in Washington that they were paid.

Q. Is this schedule of alleged payments of fees contained in Defendants' Exhibit 34, the same as the schedule contained in Exhibit No. 2, in regard to the payments of fees?

A. I presume it is; I have not examined one with the other.

Q. You have testified that they are both of them correct, I believe; now, I would like to have you explain if they are intended to be duplicates?

A. The human mind cannot do anything with absolute correctness, therefore I could not swear that one is like the other without instituting a comparison between the both of them.

Mr. Redding—Defendants submit that the exhibits speak for themselves, and can be prepared by the

counsel for the Government, and let him draw his own conclusions as to their correctness or incorrectness.

Mr. Call—Q. In Exhibit No. 34 I read at the top "Statement of the legal fees and cash paid by the Southern Pacific Railroad Company to the officers of the United States in connection with the patenting of the lands involved in Case No. 184;" I read in Exhibit No. 2 a column of items, "Cost of surveying and selecting and conveyances, and surveying selecting cost by the Register and Receiver." I would like to know whether you intend that this shall cover the same items, or whether different payments—whether they are the same payments, or whether they are other payments?

A. Evidently they are the same payments; in this statement which is known as Special Examiner's Exhibit No. 34, I find an explanatory note at the top of it, "The surveying fees stated herein to have been paid on March 26th, 1879, were paid by Henry Beard in Washington, D. C. He has paid other fees for surveying and conveying, about which he alone can give information."

Q. Who made those payments on those dates, then?

A. I presume he did.

Q. Who made the other payments?

A. The Southern Pacific Railroad Company of California, through me, in California.

Q. They were made by you, then, personally on behalf of the Company?

A. I paid the fees into the Sub-Treasury as the Agent of the Southern Pacific Railroad Company; the

Register's and Receiver's fees were generally sent by check, or by coin, through Wells, Fargo & Co.

Q. Are all the payments that you made regarding these lands contained in this exhibit?

A. They are; up to the date of it.

Mr. Call—As stated before, I ask you to produce before the Examiner your vouchers for these payments.

The Witness—I have not charge of the vouchers, they are in the treasury of the Southern Pacific Railroad Company.

Mr. Call—I ask you to produce them in order that they can be verified.

Q. I read in Exhibit 34, "not selected," "no fees paid," were any fees paid on lands not selected?

A. No, sir.

Q. The payments were only made on those that were selected? A. That is all.

Q. And when the selections were approved, then?

A. Sometimes when the selections were approved, and chiefly when the list was offered for approval, or before the time that it was offered for approval.

Q. Did you pay any fees on lands where the lists had not been accepted by the Land Office?

A. On lots of them.

Q. What became of that money, then, in the event that the lists were rejected in whole or in part?

(Question objected to by Mr. Redding as immaterial. If there was a physical tender of the fees that covers the requirements of law, and what the Government does or does not do with the fees after they are physically tendered is immaterial.)

A. The United States Government has kept it ever since; I think it amounts to something like \$54,000 that they have got. That is my memory, although I would not be certain.

Q. That is on the two land grants?

A. On lands that have been selected, and on which they will not approve the selections.

Q. You are not referring to lands involved in this suit?

A. I am referring to lands on all the main line, and all the lands on the branch line.

Q. Including several million acres?

A. Including several million acres.

Q. Are there in these items specified in Exhibit 34, any fees that have been paid in where the lands have not been listed to the company or approved?

A. It will show for itself, I presume; I will answer generally that I think there are, although I could not point out the tracts until after having made an examination.

Q. On lands not approved to the company?

A. I do not know with regard to that, I would have to look over the lists to find out.

Q. Do the lists show in regard to that, whether any of these fees have been paid for lands which have not been listed or patented to the company?

A. The lists themselves do not show, but we have information in the office in regard to that.

Q. Does this Examiner's Exhibit 34 contain all of the lands involved in this suit?

A. So far as I know it does, all the lands that were originally given to me in case 184, but, if it be now as

case 68 was, why, there probably are some more than I have any account of, for the reason that in Case 68 there were lands included in it after it had passed through my hands, so that there were a good many more acres involved in the suit than I had before me when I made up the statement regarding it.

Mr. Redding—That was owing to a consolidation of several other cases by the Government.

Mr. Call—Q. I notice in this exhibit that part of the contracts are marked "Not selected," "no fees paid," and in other cases opposite to the contract there are amounts given; what are those amounts for, what do they represent?

A. The information is given at the head of the column.

Q. Is that amount supposed to be dollars or cents down here?

A. Six dollars and fifty cents.

Q. But there is no period there to indicate what is dollars and what is cents, how am I going to tell from that exhibit what is intended as dollars and what as cents?

A. The ruling of the columns would show on the paper, that is all.

Q. But there appears to be no ruling there?

A. The ruling did not copy; the original statement was made out upon paper which had been already ruled with columns for figures.

Mr. Redding—Mr. Call, the original, as you know, is attached to the answer on file in Los Angeles.

Mr. Call—I was not aware of it; I have never seen it.

Mr. Redding—Mr. William Van Dyke, the Clerk of the Court, has filed it with the answer, and I have the admission of service of Mr. Denis, the United States Attorney, as having received it.

Mr. Call—Q. As to these tracts of land which are not marked "not selected," "no fees paid," is it to be inferred that those contracts have been selected?

A. The statement particularly sets forth that they are not selected.

Q. I mean as to the other tracts where there is no entry as to whether they have been selected or not?

A. Where the words "not selected" is not placed opposite to them.

Q. What do you mean by selected?

A. I mean making a list in accordance with the requirements of the Department of the Interior of the lands which the Railroad Company wants a patent for.

Q. That is, you make a list of lands and apply for a patent; what do you do with that list?

A. I send it to the Interior Department in Washington, where it is filed.

Q. Does it remain there? A. It does.

Q. Are all those lists approved, or are some of them rejected by the Department?

A. Some are approved, some are rejected, some are held in suspense sometimes for ten years and over.

Q. Then when you state that lands have been selected, as you have in these exhibits, you mean that you have made a list of them and applied for a patent, is that it?

A. I mean that I have made a list of them, in accordance with the form furnished to me by the General Land

Office of the Government, stating that the Southern Pacific Railroad Company would like to get a patent for the lands.

Q. It does not follow that a patent has been issued to these lands because they are indicated here as selected, then? A. It does not.

(An adjournment was taken by consent of counsel until Saturday, September 16th, 1893, at 10:30 A. M.

San Francisco, Saturday, Sept. 16th, 1893.

CROSS-EXAMINATION OF JEROME MADDEN.
(Resumed.)

Mr. Call—Q. Have you prepared a statement showing the amount of fees which have been paid for lands which have been applied for, but which have not been patented to the Company?

A. For both grants of the Southern Pacific Railroad Company, that is the grants of 1866 and 1871 there have been paid to the officers of the Government on lands selected by the Company, but for which the patents are withheld, sums as follows:

Fees of Registers and Receivers of the

United States Land Offices	\$14,816.28
And for surveying fees	54,046.83

Making total of	<hr/> \$68,863.11
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These sums are still in the possession of the Government and it neglects to issue the patents.

Q. Are some or all of the fees which have been paid which you have referred to, paid for lands involved in this suit?

A. Some of them are, I could not tell exactly what amounts.

Q. And some are not?

A. Some are not; I could not exactly tell the

A. Some are not; I could not exactly tell the amount of the fees paid for lands involved in this suit without making a calculation.

Mr. Redding—I wish you would make that calculation, if you please. It may be pertinent to ascertain if it could be done.

Mr. Call—Q. Were you over the properties of the Southern Pacific line from Tehachapi Pass by way of Los Angeles to Yuma, during the years 1871?

A. I was not.

Q. Were you over that proposed line in 1872?

A. No, sir.

Q. Were you over that line in 1873?

A. I think I went over it in 1873.

Q. Were you over it in 1874?

A. I was.

Q. I believe you said the first section of road was constructed in 1874?

A. It was; that is, the construction was finished in 1874.

Q. When did they commence grading?

A. I do not know; matters of that kind I have no knowledge of, because it is not in the Land Department of the Southern Pacific Railroad Company—that is, no records concerning it.

Q. Was not the contract between the Southern Pacific Railroad Company and the Pacific Improvement Company made in 1874 for the first section?

(Question objected to by Mr. Redding as incompetent, not the best evidence, immaterial and not in issue in this case, and calling for the opinion of the witness.)

A. I do not know of any contracts between the Southern Pacific Railroad Company and the Pacific Improvement Company or any other company.

Q. What time of the year was it in 1873 that you were over the road?

A. I think it was about the time they first commenced to construct the road.

Q. Was that not in 1874?

A. No. The construction was commenced I think in 1873, for the 50 miles from San Fernando to Spadra and finished early in 1874 and cars were running on it.

Q. I asked you yesterday to produce a list showing what items of fees contained in Defendants' Exhibit before the Special Examiner, No. 34, had been paid by you, and to produce vouchers for them, have you done so yet?

A. I have not possession of the vouchers and therefore cannot produce them.

Mr. Redding—I will state to Mr. Call, on behalf of the defendants, that the vouchers are in the custody officially of the treasurer; that he has been subpoenaed and will produce those vouchers on his examination, if they are still in existence.

Mr. Call—Very well. I would like to have them produced, because they have been referred to in this examination and seem to be important.

A. As a matter of information I would say, receipts of the register and receiver are in some cases attached to the lists; that is to say, the receipt of the fees is embodied in their certificate of approval of each list, and with regard to the surveying fees, one of the triplicates is filed in the United States Treasury in Washington and another of them in the office of the Secretary of the Interior in Washington.

Q. Can you designate what fees you paid for surveying, and what were paid in Washington on that list? A. Yes, sir.

Q. Please do so?

A. The list itself shows what I paid.

Q. Does it show what you paid in Washington?

A. Yes, sir.

Q. By somebody else? A. By Henry Beard.

Q. It shows that on the list.

A. It shows that.

Q. And the amount is shown opposite each tract, what was paid on each tract, does it?

A. I think it is; these are matters that have occurred from 15 to 19 years ago—of course my memory is not very quick in regard to them.

Q. Referring to Special Examiner's Exhibit No. 34, do you mean to say that you personally paid to the Assistant Treasurer the item of fees for surveying which are shown upon that exhibit, and all of them?

A. I paid all of them except those stated in the exhibit to have been paid on March 26th, 1879. Those were paid by Henry Beard in Washington, D. C., and he paid some other fees for surveying, about which I cannot give any information.

Mr. Redding—Q. Who is Henry Beard?

A. Henry Beard was the attorney of the Southern Pacific Railroad Company in Washington to attend to land matters.

Mr. Call—Q. What is the total amount that you paid on the lands involved in this suit?

A. The total of the surveying fees paid was \$4,448, all of which was paid by me except as regards the sums that were paid by Henry Beard in Washington which were quite inconsiderable.

Q. What is the total number of acres that you paid surveying fees upon?

A. 134,550.27 acres, less the acreage that was paid upon by Henry Beard in Washington.

Q. That payment then includes those paid for lists which were approved and went to patent and those which were disapproved, does it?

A. Those fees were paid upon lands in Case 184, selected by the Southern Pacific Railroad Company, and which lists were approved by the Register and Receiver of the local land office in Los Angeles.

Q. I think you have not answered my question fully; I wish to know whether that includes fees paid upon lists of lands which have not been approved or patented to the company by the Commissioner of the General Land Office?

A. Some of those lands have been patented and some have not; the particular tracts which are patented are set forth in the statement, Exhibit 2.

Q. And the others?

A. The others are also set forth there as having been selected.

Q. That is you have made application in the way you have before mentioned, to have them listed?

A. Made application in accordance with the form suggested by the General Land Office at Washington and asked to have them patented to the Company.

Q. Where you have used the word "patented" in that Special Examiner's Exhibit, No. 2, does that include regular patents issued by the United States, and also those lists of indemnity lands which have been approved, or does it only refer to the patented lands?

A. It only refers to patented lands, lands for which the patent has issued and been received here.

Q. I believe that none of the lands involved in this suit are within the indemnity limits of the Southern Pacific Railroad Company?

A. I could not tell you without an examination for the reason that there are a good many lands in the suit that are not within railroad limits at all.

Q. What railroad limits?

A. Southern Pacific Railroad limits.

Q. What lands are those?

A. It is set forth in the statement what lands they are.

Q. In this Exhibit No. 34?

A. In both Exhibit 2 and Exhibit 34; in the explanatory notes at the head of statement, comprising Examiner's Exhibit No. 34, it is stated that there are included in Case 184 very many tracts that are not railroad lands; the description of all such tracts is omitted from this statement.

Q. Does Exhibit 34 contain, according to your idea, all the lands within the limits of the grant to the Southern Pacific, so far as involved in this case?

A. It does.

Q. Does it contain any lands outside of the limits of this grant?

A. I think not; I could only tell upon actual examination.

Mr. Call—I will ask the witness to examine into the matter and state whether, according to his investigation and opinion, that list contains any lands which are not involved in this suit, and whether it contains all lands which are involved in this suit, and whether there are any lands involved in this suit which are not contained in that list. I do not ask you at this time to make a list of those, but so as to answer that question, and then we can see whether anything further will be necessary to be done. In referring to the lists which I heretofore asked you to prepare, I will say that when those lists are prepared by you during the progress of this hearing before this Special Examiner, I will resume your cross-examination in reference to them, and until that time we can take up another witness.

Mr. Redding—Mr. Call, I am going to write to Mr. Denis with reference to consenting to extending the time in which our testimony can be taken here.

Mr. Call—I shall write to-day to Mr. Denis, United States Attorney, and shall say to him that in my opinion some further time will be required to complete the taking of testimony.

Mr. Redding—I would like to give notice now that the defendants will proceed to take testimony as soon as they have finished with the Special Examiner in San Francisco of other witnesses on behalf of defen-

dants in New York, Washington and London, England, and under the provisions of the Revised Statutes in such cases made and provided, by the method known as *deditus potestatum* and letters *rogatory* and *de bene esse*, as the interests of the case may demand. That in conformity with this notice now given, I will serve upon the necessary counsel the exact dates that we will commence to take the testimony, which will depend somewhat upon the time we finish our testimony here. Some of this testimony is necessary on behalf of the defendants from the nature of the demands made by the Government, the complainant in this case, and the defendants, asking for information and proof of issues in the case with reference to the construction of the line of road of the Southern Pacific Railroad Company. The possible conflict in said construction with the alleged line of road of the Atlantic and Pacific Railroad Company, the proof of the construction of the line of road by the Southern Pacific Railroad Company, the acceptance of said construction, by the Commissioners of the United States and the reception of the reports of the said Commissioners approving the construction and the approval of said reports by the President of the United States.

Mr. Call—I will object and do object to the taking of any testimony in this case in any other mode than that provided by the rules for taking the same before an examiner or a special examiner of the United States Circuit Court where this cause is depending. A notice having been duly served by counsel for defendants upon counsel for plaintiff requiring all the

testimony to be taken in this case to be taken orally and an order of court having been obtained in pursuance of such notice, limiting the time for each party to take their testimony, the rules of the court require that such testimony can only be taken orally before an examiner or special examiner of the court, and I shall also require full notice to be given as required by the rules of the taking of such testimony, and application to the court for the appointment of such examiner or special examiner to take the testimony.

Mr. Redding—I shall certainly only proceed in conformity with the orders of the court. I do not think there will be any conflict between us on that point. I simply wanted to notify you this morning that it was our intention to proceed in this way, so that the Government will not be taken by surprise. The defendants will endeavor to proceed in full conformity with the rules in equity of the court before which we are proceeding in this cause, and the statutes of the United States and the construction given them by the courts of the United States.

RE-DIRECT EXAMINATION.

Mr. Redding—Q. State whether it is a fact or not that the Land Department of the Government has delayed in issuing patents to the Southern Pacific Railroad Company for lands opposite its constructed lines of road?

(Question objected to by Mr. Call as incompetent, irrelevant and immaterial.)

A. It has.

Q. In what particular instance?

(Same objection.)

A. On the main line of the road for the grant of 1866; there were no patents issued from December 2nd, 1880, until October 7th, 1891, except two patents containing in the aggregate about 4 sections of land, and which were issued to correct errors of omission in other patents which had been issued previously to December 2nd, 1880.

Q. For what amount of lands opposite constructed portions of the main line road had applications for patent been made during that period of time by the Southern Pacific Railroad Company?

(Question objected to by Mr. Call as incompetent, irrelevant and immaterial, and not the best evidence.)

A. I will have to get the book in which the resume of that is made.

Q. Can you furnish the information officially from your records?

(Same objection).

A. I can (producing books).

Q. For what amount of lands opposite constructed portions of the main line road had applications for patent been made during that period of time by the Southern Pacific Railroad Company?

(Same objection).

A. I could not answer that question between those two dates without making calculation, which would take some time.

Q. For what number of acres have patents been demanded and asked for by the Southern Pacific Railroad Company on the main line opposite constructed

portions of the road and which have not yet been received?

(Same objection).

A. On May 2nd, 1893, 1,041,589.52,

Q. The applications for these patents as yet unissued commenced at what date, earliest?

(Same objection).

A. About 1874, first, and continued at intervals down to the present date.

Q. Are those applications still pending before the Interior Department?

(Same objection).

A. They are.

Q. Has any reason been assigned by the Interior Department and given to you or to any other officer of the Southern Pacific why these patents have not issued?

(Same objection.)

A. I could say there has been seemingly no valid reason.

Q. What intimation of any reason has been made?

(Same objection.)

A. Sometimes it has been stated that patents were withheld in order to ascertain what Congress was about to do, and in other cases the patents were simply withheld without any reason being given.

Q. What do you mean Congress was about to do in reference to what?

(Same objection.)

A. In reference to some legislation that was expected after the selection was made, in other words, it has been stated to the agents of the Southern Pacific Rail-

road Company in Washington, as I am informed by them, that they, the Government officers of the Interior Department have said, "we cannot give you patents now because the legislature may hereafter do something in regard to this grant at the present session."

Q. You are now speaking of the main line grant?

(Same objection.)

A. I am speaking of both the main line grant and the branch line grant. The Act of 1866 and the Act of 1871.

Q. Has any explanation been made to you by the Interior Department after the receipt of these applications by them for patents why these patents are not issued?

(Same objection.)

A. Sometimes it would be said that they require examination, sometimes it would be said that the matters in regards to certain tracts required adjudication, sometimes it would be said that the form of the lists was not correct, although the form has been furnished or suggested by the predecessors in office of the officers then in charge of the General Land Office.

Q. Have these applications for patents been approved by the Register and Receiver, and the lands declared free to be patented by them before they were sent to Washington?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence, and the further objection that the Register and Receiver are not empowered under the law to pass upon any such questions or decide any such matters.)

A. They have very generally been approved by the Register and Receiver, in some cases the lists have

been rejected by the Register and Receiver, and an appeal was taken from their rejection to the Commissioner of the General Land Office.

Q. How many acres opposite constructed portions of the branch line grant, namely, the grant of March 30, 1871, have been applied for for patenting by the Southern Pacific Railroad Company, which applications are now pending and which applications have not resulted in obtaining patents?

(Question objected to by Mr. Call as incompetent, irrelevant and immaterial, and not the best evidence.)

A. Up to May 22nd, 1893, the number of acres for which patents had been asked and not been received or since received was 342,270.98 acres.

Q. Has the Southern Pacific Railroad Company continuously and in every possible manner applied for patents for these lands in both these grants?

(Same objection.)

A. It has; in fact, the way in which the Government is acting in regard to the issue of patents to this Railroad Company has been very discouraging, and it was the cause of great losses to the Railroad Company in preventing sales and settlement of lands and throwing doubt upon railroad titles, and all that kind of thing, and it has prevented improvement and the settlement of the country.

Q. Do you know whether the origin of this refusal on the part of the Government to issue patents to the Southern Pacific Railroad Company had its rise in the controversy over the alleged overlapping of the Atlantic and Pacific Railroad Company, or whether it had its origin prior to that time and from other causes?

(Same objection.)

A. It occurred long prior to any question being raised about the territory involved in consequence of the Atlantic and Pacific survey of its railroad line crossing the Branch Line of the Southern Pacific Railroad Company.

Q. Do you know whether or not this general opposition to the issuance of patents includes other lands than are involved in this suit?

(Same objection.)

A. Yes; a large number of acres, a million and a half of acres, even more than that.

Q. Then is it a fact or not that the attitude of the Interior Department with reference to the right of the Southern Pacific Railroad Company to have patents for its constructed portion of road and in conformity with the sections of the granting act calling for the President to issue patents, is of longer standing than any question involved in this suit or not?

(Question objected to by Mr. Call as irrelevant, immaterial and incompetent, and not the best evidence, and as calling for the opinion of the witness, and calling for a conclusion).

A. There has been a dilatory policy pursued since 1880, with regard to the issue of patents to the Railroad Company, so much so, as I said before, that it has resulted in very serious injury to the company, and this dilatoriness or omission on the part of the Government to issue patents commenced and prevailed for a long time antecedent to any question about the territory involved in consequence of the crossing of the Atlantic and Pacific and the Southern Pacific Railroad Branch Line.

Q. Were the forms of contracts for unpatented lands which have been introduced in this action at the request of the counsel for the Government predicated on any controversy arising out of the overlapping of the alleged Atlantic and Pacific location or crossing of that alleged location with the railroad of the Southern Pacific Railroad Company, or were they so drafted from other reasons?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. Those contracts were drawn up at least three years before there was any question, in the public mind at least, about the railroad company's title to the lands granted to the branch line under the grant of 1871, and that was shown by the Government issuing patents on that line without serious intermission. They did not issue patents upon all of the lands that were asked for, but they did issue patents for a great deal of it—for some of the lands involved in this very suit.

Q. Could you point out in the exhibits the date of the issuance of the last patent for lands involved in this suit by the United States?

(Same objection.)

A. No, I could not.

Q. Does the exhibit show?

(Same objection.)

A. The exhibit shows and gives the number of the patent of every one.

Q. And the date of its issuance?

A. No, it does not give the date of its issuance.

Q. Could you procure that information?

(Same objection.)

A. Certainly.

Mr. Redding—I wish you would do so, and insert it in the answer at this time.

Mr. Call—The same objection.

The Witness—I will do so.

Mr. Redding—Q. Then I understand that you state positively that your answer to Mr. Call's question the other day on page 127 of the Special Examiner's report wherein you said that this form of contract was drafted because of the mooted question between the Government and the Railroad Company respecting the Atlantic and Pacific Railroad grant, and the Southern Pacific Railroad Company grant was entirely incorrect?

(Same objection.)

A. It was entirely incorrect and wholly wrong; I stated to Mr. Call yesterday, and I state now, that I was mistaken when I made that answer, and when I was making it I had altogether a different matter in my mind; what I had in my mind was in relation to some lands out on the Mojave River, a short distance from the lands involved in this controversy. These lands were covered by the grant of 1866, first to the Atlantic and Pacific Railroad Company, and next to the Southern Pacific Railroad Company; the constructed line of the Southern Pacific Railroad Company and the surveyed line of the Atlantic and Pacific Railroad Company were parallel to each other and in some places very close to each other, and the withdrawal for both roads covered at that point and at some other points the same territory. In 1885 and

1886 a syndicate of gentlemen had in contemplation the irrigation of that territory by storing up the waters of the Mojave River, and they seemed to think that because the grant to the main line of the Southern Pacific was covered also by the grant to the Atlantic and Pacific in that place, that the title would not be good.

Q. I understand that that then was a matter entirely outside of this present litigation and had nothing whatever to do with it?

(Same objection.)

A. That was entirely outside of this litigation, and had nothing at all to do with it, but that being in my mind was the reason that I gave the answer that I did to Mr. Call. In point of fact, these contracts were drawn up in November 18, 1883, because the sales of land on the main line of the road in the Counties of Fresno, Tulare and Kern were practically stopped in consequence of the omission of the General Land Office to issue patents for them.

Q. At that time, in 1883, if you know of your own knowledge, was there any dispute of any kind between the Government and the Railroad Company as to the right of the Southern Pacific Railroad Company to have patents for lands opposite its constructed portions of road?

(Same objection and the further objection that the witness has already testified that there was such a controversy in the Interior Department.)

(This answer corrected.
See *Foot Note in man-* that statement. I said I had heard that there
uscript on page at end was, but I did not know it.

of Mr. Mad-
den's testi-
mony.
S. P. Mr. Call—That is what you said—that you
understood or heard that there was a contro-
versy.

The Witness—I heard in some way that there was some controversy in Washington regarding those lands, but I did not know what the nature of it was, and I did not know whether what I heard was true or not.

Mr. Redding—Q. Do you know of your own knowledge whether there was in 1883 any litigation between the Government and the Railroad Company, or any controversy in the Interior Department respecting the right of the Southern Pacific Railroad Company to have patents for lands opposite its constructed line of road?

(Same objection.)

A. I know that there was not.

Q. Do you know whether or not the reason why patents were not issued was on account of the dilatory action of the Interior Department or not?

(Same objection.)

A. I know of no reason why the patents should not be issued, except that the methods of the Interior Department and of the General Land Office were dilatory.

Q. You stated that you would produce forms of contracts for deeds, both executory and fully paid up for the sale of patented lands now involved in this suit. Have you them with you?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. There they are (producing).

Q. Do you know of your own knowledge that these are the exact forms used by the Southern Pacific Railroad Company in the sale of its patented lands by contract, including lands involved in this controversy?

(Same objection).

A. I do.

Mr. Redding—Defendants now offer in evidence, first, form of contract for deed, Southern Pacific Railroad Company to , the contract being an executory one, calling for the payment of the amounts due for the purchase price of the lands in installments, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 37."

(The form of contract for deed, Southern Pacific Railroad Company to , offered in evidence by the defendants, is marked by the Special Examiner, "Defendants' Exhibit before the Special Examiner, No. 37," Stephen Potter, Special Examiner, and is annexed hereto.)

Mr. Redding—Defendants next offer in evidence a fully paid contract for a deed from the Southern Pacific Railroad Company to and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 38."

(The form for a fully paid contract for a deed from the Southern Pacific Railroad Company to offered in evidence by defendants, is marked by the Special Examiner, Defendants' Exhibit before the Special Examiner, No. 38, Stephen Potter, Special Examiner, and is annexed hereto.)

The admission of each of these in evidence is objected to by Mr. Call as incompetent, irrelevant and immaterial.

Mr. Redding—Q. That statement, Exhibit No. 2, sets forth the parties who have purchased patented lands by deed from the Southern Pacific Railroad Company involved in this controversy, does it not?

(Same objection.)

A. It does.

Q. Did you as the Southern Pacific Railroad Company's Land Agent represent to those purchasers that the Southern Pacific Railroad Company, one of the defendants herein, had title and could sell the lands to the purchasers?

(Same objection.)

A. The purchasers made no question about the title in a great many instances, and when they did I exhibited the patent to them and they were entirely satisfied.

Q. Did you exhibit the patent as a bona fide evidence of title in the Southern Pacific Railroad Company?

(Same objection.)

A. I always did, and to those that I did not exhibit the patent, I told them that the Railroad Company had a patent, and in a great many instances they had learned it before they came to buy.

Mr. Call—Q. You are referring to the patented lands? A. Yes, sir.

Mr. Redding—Q. In each instance set forth in that Exhibit No. 2, where the statement shows that money was received by the Southern Pacific Railroad Com-

pany for said deeds, do you know whether or not it is a fact that the money was received by the Land Department?

(Same objection.)

A. It was.

Q. And paid into the treasury of the Southern Pacific Railroad Company?

(Same objection.)

A. It was paid by me into the treasury of the Southern Pacific Railroad Company.

Q. Did these parties in each instance there enumerated, buy in good faith and for value received?

(Objected to by Mr. Call as incompetent, irrelevant and immaterial, and not the best evidence, and involving a conclusion and mere opinion of the witness.)

A. From the way in which they acted, I should say that there was not the slightest doubt of their good faith.

Q. Don't you know of your own knowledge that they did pay in good faith?

(Same objection.)

A. They paid in good faith, they bought in good faith; I wish to say that the Railroad Company, except in a very few cases where it gave quitclaims, did not sell any unpatented lands until 1883, at which time the form of contracts for unpatented lands submitted was drawn up.

Q. Why did the Southern Pacific Railroad Company commence to sell unpatented lands in 1883?

(Same objection.)

A. The business of its land office had come to a standstill because of the refusal to issue the patents.

Q. Did you receive from the Interior Department or from any officer of the Government during the year 1883, or any time prior thereto, any communication giving any reason why the issuance of patents was refused?

(Same objection.)

A. I did not, except the reasons stated; I did not receive any letter directly from the Department of the Interior. I got my information from the agents of the Southern Pacific Railroad Company in Washington.

Q. Do you know whether it is a fact or not that the Interior Department has acted in a dilatory manner in issuing patents for the lands opposite constructed portions of both lines of the Southern Pacific Railroad Company?

(Same objection.)

A. I do not know that it has been dilatory in that respect.

Q. Is it acting in the same way now?

A. It still acts in the same way, yes; it is just as dilatory as ever.

Q. Is this true with reference to lands that are free from any claims or rights of third parties?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence, and calling for the opinion and the conclusion of the witness and requiring him to pass upon matters which are in the control and cognizance of another tribunal.)

A. It is true with regard to railroad lands that are absolutely clear on the books of the Land Department of the United States.

Q. Can you furnish for evidence in this case a statement showing what lands in controversy have

been applied for patenting which applications were approved by the Register and Receiver showing that the lands were free for patenting and without any other claims or rights thereon?

(Same objection.)

A. I believe that is already shown in the statement stated as, "selected," "not approved," and "selected" and "approved," I think.

Q. Then the statement does show what lands were selected and approved?

(Same objection.)

A. It shows what lands have been selected and not selected. It cannot show all the lands that have been approved, because, as I stated before, a great many of the lists are pending in the General Land Office in Washington awaiting either approval or rejection.

Q. Do you know of your own knowledge that, so far as the lands themselves are concerned, at the time of their application for patenting and the presentation of the lists before the Register and Receiver that they were free of any other claims or rights?

(Same objection.)

A. At the time that I signed the lists—and I signed all of them since I have been Land Agent—I made affidavit to the fact that I considered that they were free, clear and unencumbered, and that there was nothing on the books against them to prevent the lands being patented by the United States to the Southern Pacific Railroad Company.

Mr. Redding—I wish you would furnish, for evidence in this case, a copy of the form of application used in all cases where lands have been applied for

patenting by you in both the granted and the indemnity limits.

Mr. Call—I will object to the introduction of it as irrelevant, immaterial and incompetent.

The Witness—I will do so.

Mr. Redding—Q. Have you in your office the duplicate original of the applications for patents for lands involved in this case?

(Same objection.)

A. I have original lists, that is to say, I take the precaution of making out the list five copies at a time, each one of which is an original. I keep one of them for reference in the Land Office of the Southern Pacific Railroad Company; I deposit one in the office of the United States Surveyor General; I deposit a third in the office of the Register and Receiver of the United States Land Office of the district in which the land is situated; the other I send to the agent of the Southern Pacific Railroad Company in Washington, and the other I send to the Commissioner of the General Land Office in Washington.

Mr. Redding—Will you produce next Monday, for introduction by the defendants, the duplicate original that you have in your office of all lists showing the application for lands for patenting involved in this suit?

(Same objection.)

The Witness—I will.

Mr. Redding—That closes my testimony for to-day.

RE-CROSS EXAMINATION.

Mr. Call—Q. Where were those lands situated on the Mojave River that you spoke of out of which a

controversy arose in regard to the Atlantic and Pacific overlap by the Southern Pacific?

A. I did not say there was any controversy about that.

Q. I understood you to say that some parties were proposing to reclaim lands on the Mojave by an irrigation scheme, and that some question arose between you and the proposed purchasers in reference to the validity of the Southern Pacific title there; that that was what you had in mind when you answered that question as to why it was inserted in the contracts, that the contracts should be null and void, and money refunded if the lands were not patented to the Railroad Company?

A. I thought that that circumstance was the cause of having that form of contract drawn up for unpatented lands, but I was mistaken, and because the form had been drawn up three years previously to that time; the circumstance that I spoke of was as follows: The lands are situated in Township 8 North, Ranges 4, 5 and 6 West, San Bernardino Meridian, and they lie immediately south of Waterman's station and Harpers' station on the main line of the Southern Pacific Railroad, between Mojave and Needles, on the Colorado River; these gentlemen wanted to buy those lands from the Southern Pacific Railroad Company, and they urged that it was also covered by the grant of the Atlantic and Pacific Railroad Company.

Q. When was that?

A. That was in the spring of 1885, and they were fearful that trouble would arise in consequence of the conflict of the two grants; they were afraid that if the

Atlantic and Pacific Railroad Company would build its road across from the Needles to San Buenaventura that the title of the Southern Pacific would not be good to those lands, or at least to a portion of them, and I assured them that the Railroad Company would give them every guarantee that was necessary, but on examination I find that the contracts spoken of, as said before, had been drawn three years previously, and on that contract being shown to these men they went off satisfied with the form of the contract; however, the scheme was never carried out, for what reasons I do not know, but I believe it to be in consequence of not being able to get the quantity of water that they supposed they could get, and these lands are entirely outside of the lands involved in this suit.

Q. When you make contracts of sale of lands to purchasers do you furnish them any abstract of title?

A. I do not, except orally.

Q. What do you furnish them in the way of an assurance that taxes are paid on the land?

(Objected to by Mr. Redding as irrelevant, immaterial and incompetent.)

A. I state that the title comes from the Government of the United States to the Southern Pacific Railroad Company and that the taxes are paid.

Q. Do you pay taxes on all lands, or only on some lands?

(Same objection.)

A. We pay taxes on some lands; we pay taxes on the lands that are patented and on the lands that are selected and approved; with regard to the other lands,

we do not pay on them, and do not know whether the Interior Department will give them to the company.

Q. Have you ever paid any taxes on land that is not patented or selection approved by the Government?

(Same objection.)

A. I do not think we have.

Q. Is not that the real reason why the Company has not further urged the issuance of patents in order that they could escape the payment of taxes on the lands within the limits of the grant?

(Same objection.)

A. No, sir; decidedly no. The railroad company have been for years ineffectually trying to get patents for large bodies of lands which have been withheld in consequence of the omission of the Interior Department to comply with the request.

Q. Don't you think that lands are taxable that are within the limits of the grant whether they are patented or not? -

(Question objected to by Mr. Redding as calling for hearsay testimony, and as irrelevant, immaterial and incompetent.

A. I do not know.

Q. All you know is that you do not pay them, is that so?

(Same objection.)

A. I do not pay the taxes on any lands; I believe they are not paid.

Q. In making sales or contracts of these lands to purchasers do you know whether the purchasers or any of them referred to in these exhibits, examined

the terms and conditions of the Act of Congress before they purchased these lands?

(Same objection; and the further objection that the United States Statutes are public laws of the country and every one is supposed to be informed of their contents and import.)

A. I am sure I do not know.

Q. You don't know whether they did or not?

(Same objection.)

A. I do not know whether they did or not.

Q. Do you know whether they examined the maps of route of the Atlantic and Pacific Railroad Company and orders of withdrawal of lands in the Land Office before they purchased?

(Same objection).

A. I do not know.

Q. Did you say anything to them about those maps or orders of withdrawal?

(Same objection.)

A. Sometimes, in answer to questions I have; not very frequently, however, because I was not asked.

Q. Would you consider that a man was a purchaser in good faith, who had, after examining the Act of Congress and those maps in the Land Office and orders of withdrawal, purchased those lands of the Southern Pacific Railroad as belonging to the Southern Pacific?

(Question objected to by Mr. Redding as calling for a legal opinion of the witness, and it is not competent evidence. No man can testify what he believes to be the opinion of any other man, and the same is immaterial, incompetent and irrelevant.)

A. In answer to that question I can only say, that I considered that every person who bought from the Railroad Company, bought in absolute good faith.

Q. I asked you if you considered that under those circumstances a purchaser would be a good faith purchaser, do you mean to say that?

(Same objection.)

A. Many of them, yes, sir.

Q. How about all of them?

(Same objection.)

A. I can only say that I, myself, bought unpatented lands from the Railroad Company after having read the Act of Congress, and after having done all the things that you suggested, and I bought the lands in entire good faith, and I have them yet.

Q. And you think the man would be a good faith purchaser who would do so?

(Same objection.)

A. Yes, sir.

Q. A bona fide purchaser?

(Same objection.)

A. Yes, sir; I say that because I have done it myself.

Q. Do you think a man is a bona fide purchaser who would buy land under a contract which provided that if the party he bought from did not get the title or patent that the contract should be void and money refunded, would you consider that a bona fide sale?

(Same objection).

A. Yes, sir; I consider that all the persons who bought from the Railroad Company, except those who purchased since the institution of this suit, bought in absolutely good faith.

Q. You said that up to 1883, the company did not undertake to sell or contract to sell any lands on the main or branch line before they had received a patent; do I understand your statement correctly?

A. That is true.

Q. And after that then the company began to make these contracts of sale whether they had a patent or not, is that correct?

A. There was one of two things to do, either to shut up the Land Office or make contracts for sale of unpatented lands.

Q. In making a sale of lands which were unpatented in order to protect the proposed purchaser and protect the company and the officers of the company from being guilty of any criminal act in selling something they did not own, that was the reason why it was inserted in the contract that in event the company did not get a patent, that the contract should be void; is that true, or is it not true?

(Question objected to by Mr. Redding as not proper cross-examination.)

A. It is not true.

Q. Then what was the reason?

A. The reason is set forth in the contract itself.

Q. That is your idea, that it is?

A. It is my idea that it is. It will show for itself.

Q. After 1883, then, the company undertook to determine for itself what lands were granted to it, and what lands they could sell without waiting for a patent?

(Same objection.)

A. They knew the consequence of the decisions of the Supreme Court, and of the United States Circuit

Court, that they were fully entitled to all the lands within the 20-mile limits, except those that came within the exceptions to the grant, and the company conceived that it had title without patents, and in order to expedite sales, and to throw nothing in the way of them, they put that clause in, in my opinion.

Q. Do you think that would expedite sales any to put that clause in the contract?

(Same objection, and the further objection that it is immaterial, irrelevant and incompetent.)

A. That I do not know; they seemed to come in and buy quite freely.

Q. Has the company ever refunded any of this purchase money to any of these purchasers of the lands in suit?

A. They have never refunded any purchase money to any persons, excepting where the Supreme Court has decided, in Case 68, that the lands did not belong to it. They refunded the other day about \$3,000 to O. F. Dyer of Riverside, he having purchased some lands about 10 or 12 miles north of Colton. They gave him back the money and everything that he paid.

Q. But not in any other cases?

A. It was not demanded in any other cases where any final adjudication was had of the railroad company's title.

An adjournment was then taken, by consent of counsel, until Monday, September 18, 1893, at 10:30 A. M.

San Francisco, September 18, 1893.

RE-DIRECT EXAMINATION OF JEROME MADDEN.

(Resumed.)

Mr. Redding—In reference to the effect of the order of withdrawal sent by the Interior Department to the Register and Receiver of Los Angeles, and covering the lands involved, under date of April 21st, 1871, which order of withdrawal has been introduced in evidence in this case, marked "Defendants' Exhibit before the Special Examiner No.," this exhibit being a copy of the certified copy of the original, which certified copy of the original is on file in the Clerk's office of this court in Los Angeles, and will be substituted for the copy introduced herein before this Special Examiner, and which order of withdrawal refers to the granting Act of the Southern Pacific Railroad Company of March 3d, 1871, and which order of withdrawal also refers to the map of designation of route filed by the Southern Pacific Railroad Company in the office of the Commissioner of the General Land Office on April 3d, 1871, the defendants herewith refer to certain decisions of the Secretaries of the Interior, construing the effect of said withdrawal, and herewith refer to the official reporting of said decisions and the opinions of the Secretaries of the Interior in reference to the above matters, and ask leave to introduce in evidence, if the Court so desires, full copies of said decisions, or, in lieu thereof, that an order of court may be obtained, declaring that said decisions are before the court by virtue of the official publication thereof; and which decisions are as follows, to-wit,

namely: The opinion of Secretary Schurz of May 8th, 1879, in the case of Cox vs. Southern Pacific Railroad Company, which is found in 6 Copp, page 36.

Mr. Call—I object to the statements of counsel that the order of withdrawal referred to has been introduced in evidence, that it has the effect, or is the kind of an order which he names it, and I shall object to the introduction in evidence of the copies referred to as incompetent, immaterial, irrelevant, and as not the best evidence.

Mr. Redding—Next, bearing upon the same point, a decision of Secretary Schurz, dated June 8th, 1880, in the case of Gower vs. The Southern Pacific Railroad Company, found in 7 Copp, page 104.

(Same objection.)

Mr. Redding—Next, bearing upon the same subject, the decision of Secretary Teller, dated February 5th, 1883, in the case of Eberle vs. The Southern Pacific Railroad Company, found in 10 Copp, page 13.

(Same objection.)

Mr. Redding—Next, bearing upon the same point, the decision of Secretary Teller, dated May 31st, 1884, in the case of Hiller vs. The Southern Pacific Railroad Company, found in 11 Copp, page 118.

(Same objection.)

Mr. Redding—Next, bearing upon the same subject, the decision of Secretary Teller, dated January 21st, 1884, in the case of the Southern Pacific Railroad Company vs. Sturm, found in 2 L. D., page 546.

(Same objection.)

Mr. Redding—Next, bearing upon the same subject, the decision of Acting Secretary Joslyn, dated August

22d, 1884, in the case of the Southern Pacific Railroad Company vs. the State of California, found in 3 L. D., 88.

(Same objection.)

Mr. Redding—Next, bearing upon the same subject, the decision of Secretary Lamar, dated April 22d, 1885, in the case of The Southern Pacific Railroad Company vs. Bryant, found in 3 L. D., page 501.

(Same objection.)

Mr. Redding—Next, bearing upon the same subject, the decision of Secretary Lamar, dated January 30th, 1886, in the case of Sansom vs. The Southern Pacific Railroad Company, found in 4 L. D., page 357.

(Same objection.)

Mr. Redding—Next, bearing upon the same subject, the decision of Acting Secretary Muldrow, dated March 13th, 1886, in the case of the Southern Pacific Railroad Company vs. The State of California, found in 4 L. D., page 437.

(Same objection.)

Mr. Redding—Next, bearing upon the same subject, the decision of Secretary Noble, dated June 23d, 1891, in the case of Duncansen vs. The Southern Pacific Railroad Company, found in 12 L. D., page 664.

(Same objection.)

Mr. Redding—Q. The defendants introduced in evidence a form of executory contract for deed for patented lands, which was marked "Defendants' Exhibit before the Special Examiner, No. 37;" also a fully paid contract for deeds for patented lands, marked "Defendants' Exhibit before the Special Examiner, No. 38." Will you state whether or not these

two forms of contracts are the only ones that have been used by the Southern Pacific Railroad Company in the sale of whatever patented lands have been sold under contract in the suit in controversy?

(Question objected to by Mr. Call as immaterial, irrelevant and incompetent, and not the best evidence.)

A. Those two are the only forms that have been used.

Q. Do you know of your own knowledge that all of the lands that have been sold under contract which are patented, and which are involved in this suit, have been so sold by forms of contracts identical in their terms with these two forms introduced?

(Same objection.)

A. I do.

Q. Also state whether you know of your own knowledge it to be a fact that in the statement of lands sold here introduced and marked "Defendants' Exhibit before the Special Examiner, No. 2," and "Defendants' Exhibit before the Special Examiner, No. 34," wherein certain lands are shown to have been sold under contract, either executory or executed, for patented lands, that the contracts therein referred to are the same as to their terms as these two last exhibits introduced?

(Same objection.)

A. I know that they are.

RE-CROSS EXAMINATION.

Mr. Call—Q. On Saturday I requested you to produce before the Special Examiner, a list showing the lands patented to the Southern Pacific Railroad

Company involved in this case, which have been deeded by the Railroad Company to various persons named in "Defendants' Exhibit before the Special Examiner, No. 2," and also such lands which have been so patented, which have been contracted to be sold but not deeded, showing what amount has been actually paid to the Railroad Company upon each contract, and the total price of each contract; have you prepared such a statement?

A. I have prepared this statement, which, in conjunction with Exhibit 2, and Exhibit 34, will give you all the information required : this statement contains all that you want except the descriptions of the several tracts; those descriptions will be found in "Defendants' Exhibit before the Special Examiner No. 2." (Producing.)

Mr. Call—I offer this list in evidence, and ask that the same be marked "Exhibit before the Special Examiner, E."

(The statement produced by witness and referred to in the foregoing question-and-answer, is marked by the Special Examiner "Exhibit before the Special Examiner, E. Stephen Potter, Special Examiner," and is annexed hereto.)

Q. In the first column of this list is given the contract number; does the corresponding contract number appear in "Defendants' Exhibit before the Special Examiner, No. 2"?

A. It does.

Q. So that the description of each contract can be made certain by reference to the contract number?

A. Yes, sir.

Mr. Redding—Q. And also the deed number?

A. And also the deed number; the contract number and the deed number is always one and the same.

Mr. Call—Q. Does this list, Exhibit E, contain a list of all the lands which have been sold by the Company, deeded, and contracted to be sold which are not deeded, so far as patented and involved in this case?

A. That list contains a statement of all the patented lands which have been sold by deed or by contract, in so far as it relates to the territory embraced in this suit, of lands patented.

Q. Does this list, Exhibit E, contain descriptions of any tracts of land which are not within the limits of the grant to the Southern Pacific Railroad?

A. It does not contain the description of any lands; it contains the numbers.

Q. I am referring to the contract number, and the corresponding contract number containing the description on Exhibit 2? A. Yes, sir; it does.

Q. Perhaps you misunderstood the question; does it contain any lands which are not within the limits of the grant to the Southern Pacific Railroad?

A. The contracts described in that exhibit have no reference to any lands outside of Case 184, and it contains a correct list of all the contracts and deeds that have been issued for patented lands within that territory.

Q. Does it contain any lands which are not within the limits of the grant to the Southern Pacific Railroad branch line? A. It does not.

Q. How do you know that it does not?

A. Because I have made examination in relation thereto.

Q. What did you examine to ascertain that?

(Question objected to by Mr. Redding as immaterial, from the fact that the lands referred to are patented lands, namely, patented by the United States of America to the defendant, the Southern Pacific Railroad Company, as being within the limits of the grant. That being the case, the Government is precluded at this time from making any question as to whether those lands are not within the said grant, the recitals in the patents themselves declaring that they are within the limits of the grant of March 3d, 1871.)

A. I examined maps, papers, abstracts, patents, and many other means of ascertaining the information in the United States Land Offices of the proper district.

Q. Does the list of lands contained in "Defendants' Exhibit before the Special Examiner, No. 2," contain any lands which are not within the limits of the grant to the Southern Pacific Railroad?

(Same objection.)

A. It does not.

Q. State how you know that it does not.

(Same objection.)

A. From my own knowledge, from examination, from information; I do not know just exactly what you mean.

Q. What examination did you make of authentic, documentary evidence in order to ascertain the location of these tracts?

(Same objection.)

A. I examined the certified copies of maps sent to me by the Interior Department of the United States;

I examined abstracts that were furnished by the local land office of the proper district, to wit: Los Angeles; I examined all the records, books, papers, patents, that were issued.

Q. Did you also examine the map of location of the Southern Pacific Railroad branch line showing the limits of the grant?

(Same objection.)

A. Yes, as laid down on the certified copies that were furnished to me by the Interior Department.

Mr. Call—I ask you to produce the map which you examined in reference to this matter, being the map of location of the Southern Pacific Railroad branch line.

The Witness—Do you mean the certified copy?

Mr. Call—Yes, sir.

The Witness—I will do it.

(Witness produces maps.)

Q. Have you produced before the Special Examiner the maps and diagrams referred to by you by which you ascertained whether the lands embraced within the list marked "Defendants' Exhibit before the Special Examiner, No. 2," and "Exhibit before the Special Examiner, E," are within or without the limits of the Southern Pacific Railroad branch line?

(Same objection.)

A. I have.

Mr. Call—I offer in evidence the first map referred to, and ask that the same be marked "Exhibit before the Special Examiner, F."

Mr. Redding—The defendants object to the introduction of this map as being incompetent, immaterial and irrelevant; incompetent in that the Government

itself has alleged that these lands are within the limits of the grant to the Southern Pacific Railroad Company, and therefore the question is not in issue in the case; and furthermore object to the introduction of this particular exhibit from the fact that it is not incumbent upon the defendants to introduce one of their own private documents. If the Government desire to introduce a copy of anything belonging to the defendants, which the defendants themselves have not introduced, they will have to have the same made. The defendants refuse to allow this to be filed as an exhibit called for by the Government without an order of Court. They are willing that the Government have a copy of anything they desire offered, but not to take from out the office of the defendants original documents used by them in their daily business; reiterating the first objection that the evidence is incompetent, immaterial and irrelevant, from the fact that it is not in issue in the case.

Mr. Call—I insist upon the map being put in evidence, and ask that the Special Examiner make an order requiring the witness to produce the same before Special Examiner, and that it be marked as an exhibit in this case.

Mr. Redding—The Special Examiner has no authority to make any orders.

Mr. Call—I think he has. I think it is his duty to do so.

Mr. Redding—Representing my clients, I refuse to allow this particular map to be filed. Now, you can obtain an order of Court, if you wish.

Mr. Call—I also offer in evidence the next three maps, referred to by the witness as being maps upon

which he predicated his examination of the lists offered in evidence in this case, and ask that the same be marked Special Examiner's Exhibits G, H and I, respectively.

Mr. Redding—Mr. Madden, I will hand back these maps to your personal custody, and I make the same objection to the offer of the last three maps, with the statement that if the Government desires to make certified copies of these documents, we shall be pleased to allow them so to do, but these are the original papers used by the defendants in their daily business, and to put those originals on file would stop the business of the defendant, the Southern Pacific Railroad Company, and reiterating the objection that the same are immaterial, irrelevant and incompetent, from the fact that the offer raises an issue not in the case, the pleadings admitting on behalf of the Government that the lands in controversy are within the limits now sought to be proven.

Mr. Call—I ask the Examiner to take notice that the maps offered are not original, but are certified copies, upon which the witness has testified that he predicated his statements which he has heretofore made as a witness for the defendant.

Mr. Redding—You know what I mean when I say originals. They are originals in the office of the defendant, the only documents they use in the transactions of the defendant's business, and as such necessary for the daily transaction of the affairs of the Land Department of the Southern Pacific Railroad Company.

The Witness—if you take those maps away from me, I cannot transact the business of the Southern

Pacific Railroad Company's Land Department in this territory.

Mr. Redding—The Government can obtain copies from you, and I understand Mr. Madden, you would be very pleased to allow them to make copies.

The Witness—Yes, sir; they can make all the copies they please, but if those maps are taken away from me I cannot transact business until I get other copies from Washington.

Mr. Call—I shall require the witness to produce these copies of maps, or if he wishes to have copies made and certified by the Examiner at the expense of the defendants, he can do so.

Mr. Redding—The question of the expense, I will submit with you to the Court, but the present point is whether there shall be a physical use of these copies of maps outside of the office of the Land Department; and representing the defendants, and particularly the Southern Pacific Railroad Company, I shall instruct the witness not to allow them to go out of his use.

Mr. Call—I ask that they be marked by the Special Examiner.

Mr. Redding—I shall object to their being marked, because that puts the maps themselves on file in the case, and I will not allow, until I am instructed to by the Court, these maps now shown to you by Mr. Madden, the witness, to be marked and filed as exhibits. I am perfectly willing that the Government obtain certified copies. If the Court should instruct that those certified copies be made at expense of defendants, they

shall be made at their expense; if the Court should instruct that the copies should be made at the expense of the Government calling for them, very well; but these maps themselves, until instructed by an order of Court, I now instruct the witness not to allow them to be filed as exhibits.

Mr. Call—I call your attention to the rules of the United States Supreme Court in equity, requiring the party who produces the witness to pay all the expenses of his examination in the first instance.

Mr. Redding—In the first instance that is right. Whether that covers exhibits called for by you is a question in my mind. The expense is not the important factor at this time. What I am instructing the witness to do is not to allow these originals to be filed, because, if they are, they stop the business of the Land Department of the Southern Pacific Railroad Company.

Mr. Call—The maps referred to, and exhibits, are as follows:

The first map under seal of the General Land Office is certified to be: "A true copy of the railroad diagram on file in the General Land Office;" and upon the map is this endorsement: "Line of route and limits of Southern Pacific Railroad provided by Acts of July 27th, 1866, and March 3, 1871;" and annexed to the map in this letter.

The Witness—The letter referred to is attached to the map, and was received attached.

Mr. Call—The letter reads as follows:

"DEPARTMENT OF THE INTERIOR,

"General Land Office,

"On record, W. K. M.

Vol. 5, page 252.

"Register and Receiver,

"Los Angeles, California:

"Gentlemen:—By Act of March 3, 1871, Section 23,
"the Southern Pacific Railroad Company is autho-
"rized to construct a railroad from a point at or near
"Tehachapi Pass by way of Los Angeles to the Texas
"Pacific Railroad at or near the Colorado River, with
"the same grant of lands, &c, as were granted to said
"company by Act of July 27th, 1866. The com-
"pany having filed a diagram designating the
"general route of said road, I herewith
"transmit a map showing thereon the line of
"route, as also the twenty and thirty mile limits of the
"grant to the line of withdrawal for the Southern
"Pacific road under the Act of 1866; and you are
"hereby directed to withhold from sale or location,
"pre-emption or homestead entry, all the odd num-
"bered sections falling within those limits. The
"even numbered sections within the limit of twenty
"miles you will increase in price to \$2 50 per acre,
"and will dispose of them at that price, but only un-
"der the pre-emption and homestead laws. Where
"pre-emptions or homestead entries may have had
"legal inception prior to the receipt of this order, the
"settlers may of course prove their claims either upon
"odd or even numbered sections at the rate of \$1 25
"per acre. This order will take effect from the date

" of its receipt by you, and you will please acknowledge receipt by date. The even numbered sections between the twenty and thirty mile of indemnity limits are not affected by this order.

" Very respectfully,

" WILLIS DRUMMOND,

" Commissioner."

Mr. Redding—We have no objection to that letter being used, or any portion of the map or the entire map, if copied by the Examiner, being offered in testimony, and we are perfectly willing that the Examiner make a memorandum in pencil on these maps sought to be introduced by the Government's counsel, so as to designate them, provided that they remain in the charge and personal control of the Land Department of the Southern Pacific Railroad Company until copies of them are made to be filed in the case. The extent of the defendant's objection to the introduction of these maps, aside from the legal objections, goes simply to the impossibility of having these maps out of the custody of the Land Department, and at the same time continue the business of the Land Department.

(The maps are respectively marked by the Special Examiner in lead pencil, as follows :

" This is intended to be Exhibit before the Special Examiner, F, Stephen Potter, Special Examiner."

" This is intended to be Exhibit before the Special Examiner, G, Stephen Potter, Special Examiner."

" This is intended to be Exhibit before the Special Examiner, H, Stephen Potter, Special Examiner."

"This is intended to be Exhibit before the Special Examiner, I, Stephen Potter, Special Examiner.")

Mr. Call—The map marked "G" is a map endorsed, "Map of the Branch Line Southern Pacific Railroad," showing the twenty and thirty mile lateral limits, Los Angeles District, California, and showing the line of the road from Mojave by way of Newhall to Los Angeles, and showing twenty and thirty mile limits, showing also a line marked "temporary twenty mile limits," upon each side of the line, and also a line marked "permanent twenty mile limits," also a line marked "temporary thirty mile limits," and a line marked "permanent thirty mile limits," on each side.

The map marked "H" is endorsed "Southern Pacific Railroad," and shows the line of the Southern Pacific Railroad from a point in the northwest quarter of Section 3, Township Two North, Range 15 West, thence eastwardly to a point in the northwest corner of Section Twenty-six, in Township One South, Range 9 West, and showing the twenty and thirty mile limits, and on the back of the map being marked in pencil, "San Fernando to Spadra."

The map marked I is endorsed, "Map of the Southern Pacific Railroad," showing twenty and thirty mile limits, in Los Angeles Land District, and showing the line of Southern Pacific Railroad as appears thereon, from a point in Section Twenty-six, Township One South, Range Nine West, thence easterly to a point in Section 9, Township 3 South, Range 1 West, San Bernardino Base and Meridian, each of said maps being duly certified under seal of the Commissioner of the General Land Office, under date of December 20th,

1875, in the case of "I," under date of November 13th, 1874, in the case of "H," and under date of March 27, 1877, in the case of "G."

Q. I observe on looking at this map, which has been referred to and marked "G," a line marked "Southern Pacific Railroad from Mojave by way of Newhall to Los Angeles," and I observe that on this map there is a line in red, marked "temporary twenty mile limits," and a yellow line marked "twenty mile limits," which appears to be a permanent twenty mile limit, and outside of that a red line marked "temporary thirty mile limits," and also a green line marked "thirty mile limits;" please explain what those lines mean, as you understand them.

(Question objected to by Mr. Redding as immaterial and irrelevant, from the fact that the bill of complaint in this case alleges that the lands in controversy are within the limits of the grant to the Southern Pacific Railroad Company, and, therefore, there is no issue in the case calling for this testimony.)

A. The lines on the map marked respectively, "temporary twenty mile limits" and "temporary thirty mile limits" conform to the lines of withdrawal on the map by the Commissioner of the General Land Office, showing the withdrawal in 1871; the lines marked "twenty mile limits" and also "thirty mile limits" show the lines as they were adjusted after the construction of the road.

Q. As shown by the map attached to the Commissioner's report?

(Same objection.)

A. I do not know, I suppose so; I do not know what the Commissioner had in mind when he made this.

Q. I observe that these maps do not correspond to each other, that there seems to be a variance of several miles; do you know how to account for that?

Mr. Redding—We object to the suggestion of counsel that there is a variance, according to his observation; he is not on the witness stand. We also object to the question for the same reasons as heretofore stated.

A. Any information that I could give on the subject, if it would be information, would be merely surmise; I suppose that the Commissioner of the General Land Office could tell you exactly what was meant by the deviation of one line from the other.

Mr. Call—Q. Which line did you go by when you made your list, Exhibit 2?

(Same objection.)

A. The lines marked "twenty mile limits" and "thirty mile limits."

Q. Not that marked, "temporary?"

(Same objection.)

A. Not that marked "temporary."

Q. Did you observe that the twenty and thirty mile limits permanently established upon the construction of the road did not correspond to the twenty and thirty mile limits marked upon the map filed in 1871, marked here "F"?

(Same objection, and the further objection, that it is a well known fact that all roads upon their construction deviate to more or less, or unimportant extent

from the designated line; that a designated line of railroad upon which a land grant operates, and a withdrawal takes place, cannot in the nature of things correspond to the exact center line of the constructed railroad, and that in all of these land grants a certain deviation is made from the designated line of road and the center line of the constructed road of necessity; therefore, the question put to the witness is incompetent, immaterial and irrelevant.)

Mr. Call—I object to the counsel feeding the witness under the guise of objections.

A. I did.

Q. Which line was used in the adjustment of the Southern Pacific grant upon issuance of patents—the line marked in 1871, or the other permanent line?

(Same objection.)

A. The permanent lines.

Q. Then in preparing the statement marked, "Defendants' Exhibit before the Special Examiner, No. 2," containing a list of lands sold and contracted to be sold, and "Defendants' Exhibit before the Special Examiner, No. 34," you used as a basis for them the lines marked, "permanent twenty and thirty mile limits?"

(Same objection.)

A. I was guided by those lines.

Q. Why didn't you use the other lines?

(Same objection.)

A. Because the Commissioner of the General Land Office sent me that map on which were the lines colored yellow and green, marked "permanent."

Mr. Call—That is all I want to examine Mr. Madden upon to-day. When he prepares the other lists that were called for, I desire to examine him further.

(It is agreed between counsel that certified copies of the maps marked in pencil by the Special Examiner, respectively, "This is intended to be exhibit before the Special Examiner," "F", "G", "H" and "I", may be made and attached to this record in lieu of the original maps, the question of which party shall bear the expense of making such certified copies to be presented to the Court, the parties to this action agreeing to abide by its decision in that regard).

(An adjournment was then taken by consent of counsel until Tuesday, September 19th, 1893, at 10:30 A. M.)

San Francisco, September 19th, 1893.

Mr. Redding—In reference to the cost of documentary evidence and copies thereof, introduced by the Government on the cross-examination of defendants' witnesses, and also in reference to the expense of taking the testimony of the defendants' witnesses by the Government on cross-examination, permit me to call attention to the case of *Brickell vs. Mayor of New York*, 55 Federal Reporter, 565, decided April 17th, 1893; and I desire to invoke the rule, as I understand it, that the cost of cross-examination and all the expenses incident thereto must be paid for by the party in action conducting the cross-examination. I would state that in reference to the certified copies of exhibits now sought to be introduced by the Govern-

ment, on cross-examination of the defendants' witnesses, that these certified copies will be made and certified to by the Special Examiner and that at your earliest convenience I would like to submit the question of the cost in the first instance for these matters to the Court for adjudication and ruling.

RE-DIRECT EXAMINATION OF JEROME MADDEN.

(Resumed).

Mr. Redding—Q. I asked you yesterday to procure, if they were in your possession, as custodian of the documents of the Land Department of the Southern Pacific Railroad Company, the duplicate originals of lists showing what application, if any, has been made by the said Land Department to the Government of the United States for patents for lands embraced within the grant to the defendant, the Southern Pacific Railroad Company, of March 3, 1871, and involved in this suit. Have you been able to procure those duplicate originals?

A. I have; here they are (producing).

Mr. Redding—The defendants offer in evidence List No. 1, entitled as follows: "Lands selected by the Southern Pacific Railroad Company in the Los Angeles Land District, State of California, granted limits," and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 39."

(List No. 1, entitled "Lands selected by the Southern Pacific Railroad Company in the Los Angeles Land District, State of California, granted limits," is marked by the Special Examiner "Defendants' Exhibit before the Special Examiner, No. 39," and a cer-

(A certified copy thereof so far as relates to the lands involved in this suit, is annexed hereto.)

Mr. Call—We object as incompetent, immaterial and irrelevant, and upon the further ground that it appears from the so-called list that the lands described are embraced within the 20-mile or granted limits of the grant of March 3, 1871, and are not subject to selection by the terms of that grant; and upon the further ground that it does not appear from the so-called list that any action has been taken thereon by the Commissioner of the General Land Office, or by any competent officer of the Interior Department; and upon the further ground that the most of a large part of the tracts described in the so-called list are not involved in this suit; and upon the further ground that the document offered is not the best evidence of the matter sought to be adduced.

Mr. Redding—Q. This Exhibit is marked No. 39; is this a duplicate original of the list of lands filed as thereon appears in the office of the Register and Receiver at Los Angeles for the purpose of obtaining patents thereon for the lands involved therein?

(Same objection.)

A. It is.

Q. How were all of these originals prepared?

(Same objection.)

A. They were prepared in the Land Office of the Southern Pacific Railroad Company.

Q. Does this duplicate original contain the official seal of the Southern Pacific Railroad Company?

(Same objection.)

A. Yes, sir, to the statement, in this case, that Benjamin B. Redding was the duly appointed Land

Agent of the Southern Pacific Railroad Company; he is the person who signed the list.

Q. The second page of this list contains a statement to what effect?

(Same objection.)

A. A statement to the effect that "The undersigned, the duly authorized Land Agent of the Southern Pacific Railroad Company, under and by virtue of the 23rd section of the Act of Congress, approved March 3, 1871, entitled 'An Act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road and for other purposes,' and under various Acts of Congress recited, hereby makes and files the following list of selections of lands claimed by said company as inuring to it under and by virtue of the grants and provisions of said Act of Congress."

Q. Who was that signed by?

(Same objection.)

A. Benjamin B. Redding.

Q. Do you know that signature?

(Same objection.)

A. Very well, indeed.

Q. Is that the signature of Benjamin B. Redding?

(Same objection).

A. It is.

Q. Was he Land Agent, at the time, of the Southern Pacific Railroad Company?

(Same objection.)

A. He was Land Agent of the Southern Pacific Railroad Company at that time.

Q. This is dated when?

(Same objection.)

A. Here is the date of his affidavit to this list as being correct—20th of January, 1876.

Q. Have you investigated this exhibit to ascertain what lands therein sought to be patented are involved in this suit?

(Same objection.)

A. I have.

Mr. Redding—I desire to substitute for this exhibit a certified copy of the original, to be certified by the Examiner as correct in all particulars, leaving out, however, those lands sought to be patented which are not involved in this suit, as we have agreed to leave lands in the patents heretofore introduced which are not involved in this suit, and that, when certified, shall be filed in lieu of this exhibit. Is that agreeable to you, Mr. Call?

Mr. Call—Yes, sir; that is satisfactory.

Mr. Redding—Q. Do you know of your own knowledge whether a duplicate original of this list was filed with the Register and Receiver?

(Same objection.)

A. I do; it was so filed.

Q. Under whose supervision?

(Same objection.)

A. Under the supervision of Benjamin B. Redding, he was the Land Agent at that time.

Q. Were you in the employ of the Southern Pacific Railroad Company at that time?

(Same objection.)

A. I was.

Q. In what capacity.

(Same objection.)

A. Deputy Land Agent.

Q. What is meant by a list of lands to be selected for patenting when they are in the granted limits and not in the indemnity limits?

(Question objected to by Mr. Call as incompetent, irrelevant and immaterial, and upon the further ground that it appears from the so-called list that the lands described are embraced within the 20 mile or granted limits of the grant of March 3, 1871, and are not subject to selection by the terms of that grant; and upon the further ground that it does not appear from the so-called list that any action has been taken thereon by the Commissioner of the General Land Office or by any competent officer of the Interior Department; and upon the further ground that the most or a large part of the contracts described in the so-called list are not involved in this suit, and upon the further ground that the document offered is not the best evidence of the matter sought to be adduced, and upon the further ground that it is calling for the opinion of the witness upon the question of the construction of an Act of Congress.)

A. It means that it is a list of selection of lands claimed by the Southern Pacific Railroad Company as inuring to it and to which it is entitled under and by virtue in this case of the grant and provisions of the Act of March 3, 1871.

Q. Is the method of asking for patents shown by this Exhibit 1, authorized by the Interior Department and under which you were acting and the Land Department were acting at that time?

(Same objection.)

A. It is in the form that was suggested and required by the Land Department of the United States.

Q. Can you state whether any of the lands asked for to be patented in Exhibit No. 39, were patented and are shown to be embraced in the patents already offered in this case?

(Same objection.)

A. Yes; almost all these lands are patented.

Mr. Redding—Q. Will you have an official statement made showing from each one of these exhibits now about to be introduced and including the one already introduced, what lands have been patented from the lists of selections as filed and sought to be patented by the Southern Pacific Railroad Company in this case?

(Same objection.)

The Witness—I will.

Mr. Call—What do you mean by official statement?

Mr. Redding—I mean a statement made officially by Mr. Madden from the records of the Land Department, the same as you have had compiled from the evidence introduced of other matters.

Mr. Call—Do you mean under the seal of the General Land Office, or a statement by an officer of the United States, or do you mean some statement prepared by the defendant Railroad Company?

Mr. Redding—I mean that the witness, Mr. Madden, shall take the patents introduced already in evidence, and shall take these exhibits now being introduced in evidence, and shall take out of both the land involved in this suit which appears in common in both and is therefore shown to be patented.

Mr. Call—In other words, to take such tracts in those lists as are involved in this suit which have been patented and make a list of them.

Mr. Redding—That is all; for the convenience of yourself, myself and the tribunal before whom we are now proceeding.

Mr. Call—I will make the same objection.

The Witness—That is already done in the statement which has been furnished and which I think is marked 1 and 2.

Mr. Redding—I thought you made another compilation in a more condensed form?

(Same objection.)

The Witness—I did, of the patented lands that have been sold.

Mr. Call—The list you refer to is embraced then in what has been introduced here as "Exhibit before the Special Examiner, E," the list of patented lands which he last introduced.

Mr. Redding—No; the list of patented lands in "E" is a list of patented lands sold; it is not a list of patented lands both sold and unsold.

Mr. Call—I see.

The Witness—That is comprised in Exhibit 2.

Mr. Redding—Then I understand that "Defendants' Exhibit before the Special Examiner, No. 2," will show what lands are patented from those selections?

(Same objection.)

A. It will.

Mr. Redding—Then I will ask you to make that compilation again.

Q. Does this contain a certificate of the Register and Receiver of Los Angeles with regard to the lands sought to be patented?

(Same objection.)

A. It does.

Q. Will you please read that certificate?

(Same objection.)

A. (Reading):

"United States Land Office, Los Angeles, Cal.,)

"January 28th, 1876.)

"We hereby certify, that we have carefully and critically examined the foregoing list of lands claimed by the Southern Pacific Railroad Company, under the grant to the said Southern Pacific Railroad Company by Acts of Congress, approved March 3, 1871, July 27th, 1866, July 25, 1868, June 28, 1870, above mentioned, and selected by Benjamin B. Redding; the duly authorized agent, and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States and within the limit of twenty (20) miles on each side; and that the same are not, nor is any part thereof returned and denominated as mineral land or lands, nor claimed as swamp lands, nor is there any homestead, pre-emption, State, or other valid claim to any portion of said lands on file or recorded in this office; we further certify, that the foregoing list shows an assessment of the fees payable to us allowed by the Act of Congress, ap-

proved July 1, 1864, and contemplated by the circular of instructions, dated January 24th, 1867, addressed by the Commissioner of the General Land Office to Registers and Receivers of the United States Land Offices, and that the said Company have paid to the undersigned Receiver, the full sum of one hundred and twenty-nine (\$129) dollars in full payment in discharge of said fees.

ALFRED JAMES,
Register.
J. W. HAVERSTICK,
Receiver."

Q. In whose handwriting is this certificate other than the printed portions and the signatures?

(Same objection.)

A. The handwriting in the certificate, except the words, "Los Angeles, Cal., January 28th, 1876," and the signatures is my own handwriting.

Q. Did you know these men, Alfred James, Register, and J. W. Haverstick, Receiver?

(Same objection.)

A. Very well, indeed.

Q. Are those their signatures?

(Same objection.)

A. Those are the genuine signatures of these gentlemen.

Q. Do you know whether or not they occupied the position of Register and Receiver at Los Angeles at the time they signed this?

(Same objection.)

A. I know that they did.

Mr. Redding—Defendants offer in evidence List No. 2, entitled "List No. 2 of lands selected by the Southern Pacific Railroad Company in the Los Angeles Land District, State of California, granted limits," and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 40."

(Same objection.)

(List No. 2 of lands selected by the Southern Pacific Railroad Company in the Los Angeles Land District, State of California, granted limits," is marked by the Special Examiner, Defendants' Exhibit before the Special Examiner, No. 40, and a certified copy thereof so far as relates to the lands involved in this suit is annexed hereto.)

Q. Who was the Land Agent when this list of lands was filed for patenting?

(Same objection.)

A. I was the Land Agent of the Southern Pacific Railroad Company at that time.

Q. What date was this list presented?

(Same objection.)

A. I made affidavit to the correctness of the list on the 27th of June, 1877.

Q. Does this contain a certificate of the Register and Receiver of Los Angeles with regard to the lands sought to be patented?

(Same objection.)

A. It does.

Q. Will you please read that certificate?

(Same objection.)

A. (Reading):

"United States Land Office,
"Los Angeles, Cal.,

"January 28th, 1876.

"We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Southern Pacific Railroad Company under the grant to the said Southern Pacific Railroad Company by Acts of Congress approved March 3, 1871, July 27th, 1866, July 25, 1868, & June 28, 1870, above mentioned and selected by Benjamin B. Redding, the duly authorized agent, and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limit of twenty (20) miles on each side, and that the same are not nor is any part thereof returned and denominated as mineral land or lands, nor claimed as swamp lands, nor is there any homestead, pre-emption, State or other valid claim to any portion of said lands on file or record in this office; we further certify that the foregoing list shows an assessment of the fees payable to us allowed by the Act of Congress, approved July 1, 1864, and contemplated by the circular of instructions dated January 24th, 1867, addressed by the Commissioner of the General Land Office to Registers and Receivers of the United States Land Offices, and that the said company have paid to the undersigned, the Receiver, the full sum of one hundred and twenty-nine (\$129) dollars in full payment in discharge of said fees.

ALFRED JAMES, Register.

J. W. HAVERSTICK, Receiver."

Mr. Redding—Q. In whose handwriting is this certificate other than the printed portions and the signatures?

(Same objection.)

A. The handwriting in the certificate, except the words "Los Angeles, California, January 28th, 1876," and the signatures are in my own handwriting.

Q. Did you know these men, Alfred James, Register, and J. W. Haverstick, Receiver?

(Same objection.)

A. Very well, indeed.

Q. Are those their signatures?

(Same objection.)

A. Those are the genuine signatures of these gentlemen.

Q. Do you know whether or not they occupied the position of Register and Receiver at Los Angeles at the time they signed this?

(Same objection.)

A. I know that they did.

Q. Is the certificate to Exhibit No. 40 similar to the one that you have read in relation to Exhibit 39, with the exception that the dates are different and the amounts paid?

(Same objection.)

A. With the exception that the dates are different and that the amounts paid are also different, the certificate is exactly the same.

Q. Did you present this certificate to the said Register and Receiver as Land Agent of the Southern Pacific Railroad Company?

(Same objection.)

A. I sent it to him by mail or express, I have forgotten which.

Q. From that list, upon what date is it shown that the Southern Pacific Railroad Company asked for patents for the lands involved therein and including certain lands in this suit?

(Same objection.)

A. I made an affidavit to the correctness of this list on the 27th of June, 1877.

Q. What is the date of the Register's and Receiver's approval?

(Same objection.)

A. July 2d, 1877.

Mr. Redding—We will have a certified copy of this List No. 2, marked "Defendants' Exhibit before the Special Examiner, No. 40, made, covering such lands as are involved in this suit and then substituted, after being certified by the Examiner, for the original exhibit on file.

Mr. Redding—The defendants offer in evidence List No. 4, of Lands selected by the Southern Pacific Railroad Company, Los Angeles Land District, State of California, granted limits, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 41."

(Same objection.)

(List No. 4, of Lands selected by the Southern Pacific Railroad Company, Los Angeles Land District, State of California, granted limits, is marked by the Special Examiner, "Defendants' Exhibit before the Special Examiner, No. 41," and a certified copy thereof so far as relates to the lands involved in this suit, is annexed hereto.)

The Witness—I wish to correct an answer I made. I said I sent it by Wells, Fargo & Co. I sent it, and it was filed in the United States Land Office, by the local agent of the Southern Pacific Railroad Company Land Department, Mr. Cabot, at Los Angeles.

Mr. Redding—Q. Was the representative of the Land Department and agent in Los Angeles at that time?

(Same objection.)

A. He was.

Q. Under your authority?

(Same objection.)

A. Yes, sir.

Q. When was this sworn to by you as being correct?

(Same objection.)

A. On the 12th of July, 1882.

Q. You were Land Agent at that time?

(Same objection.)

A. I was Land Agent of the Southern Pacific Railroad Company at that time.

Q. I believe you have testified that you have been Land Agent from 1876 down to and including the present time?

(Same objection.)

A. From the 10th of May, 1876, up to the present time I have been the Land Agent, and I still am the Land Agent of the Southern Pacific Railroad Company.

Mr. Redding—This list, Defendants' Exhibit before the Special Examiner, No. 41, will show for itself when it was approved by the Register and Receiver.

Q. I observe that in this list, Defendants' Exhibit before the Special Examiner, No. 41, there has been a change in the Register to Mr. Johnson?

(Same objection.)

A. Yes, sir.

Q. Does that show in this list what lands were selected which were involved in this suit?

(Same objection.)

A. It does.

Q. Do you know of your own knowledge that this list was presented at the time therein stated?

(Same objection.)

A. It was.

Mr. Redding—Mr. Call, if you will allow me to, I will put in all these others, and mark them with the understanding that the same questions and answers apply to each one without going through all these series of questions.

Mr. Call—Very well, subject to the same objections.

Mr. Redding—Defendants offer in evidence List No. 11, entitled "Lands Selected by the Southern Pacific Railroad Company, granted limits," and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 42."

(Same objection.)

(List No. 11, entitled "Lands Selected by the Southern Pacific Railroad Company, granted limits," is marked by the Special Examiner, "Defendants' Exhibit before the Special Examiner, No. 42," and a certified copy thereof so far as relates to the lands involved in this suit is annexed hereto.)

Mr. Redding—Defendants offer in evidence List No. 17, entitled, "Lands Selected by the Southern Pacific Railroad Company, granted limits," and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 43."

(Same objection.)

(List No. 17, entitled "Lands selected by the Southern Pacific Railroad Company, granted limits?" is marked by the Special Examiner, "Defendants' Exhibit before the Special Examiner, No. 43," and a certified copy thereof so far as relates to the lands involved in this suit, is annexed hereto.)

Mr. Redding—Defendants offer in evidence List No. 21, entitled, "Lands selected by the Southern Pacific Railroad Company, granted limits," and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 44."

(Same objection.)

(List No. 21, entitled "Lands selected by the Southern Pacific Railroad Company, granted limits," is marked by the Special Examiner, "Defendants' Exhibit before the Special Examiner, No. 44," and a certified copy thereof so far as relates to the lands involved in this suit, is annexed hereto.)

Mr. Redding—Defendants offer in evidence List No. 30, entitled "Lands selected by the Southern Pacific Railroad Company, granted limits," and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 45."

(Same objection.)

(List No. 30, entitled "Lands selected by the Southern Pacific Railroad Company, granted limits," is

marked by the Special Examiner, "Defendants' Exhibit before the Special Examiner, No. 45," and a certified copy thereof so far as relates to the lands involved in this suit, is annexed hereto.)

Mr. Redding—Defendants offer in evidence List No. 31, entitled "Lands Selected by the Southern Pacific Railroad Company, granted limits," and ask that it be marked, "Defendants' Exhibit before the Special Examiner, No. 46."

(Same objection.)

(List No. 31, entitled "Lands Selected by the Southern Pacific Railroad Company, granted limits," is marked by the Special Examiner, "Defendants' Exhibit before the Special Examiner, No. 46," and a certified copy thereof, so far as relates to the lands involved in this suit, is annexed hereto.)

Mr. Redding—Defendants offer in evidence List No. 33, entitled "Lands Selected by the Southern Pacific Railroad Company, granted limits," and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 47."

(Same objection.)

(List No. 33, entitled "Lands Selected by the Southern Pacific Railroad Company, granted limits," is marked by the Special Examiner, "Defendants' Exhibit before the Special Examiner, No. 47," and a certified copy thereof, so far as relates to the lands involved in this suit, is annexed hereto.)

Mr. Redding—Defendants offer in evidence List No. 52, entitled "Lands Selected by the Southern Pacific Railroad Company, granted limits," and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 48."

(Same objection.)

(List No. 52, entitled "Lands Selected by the Southern Pacific Railroad Company, granted limits," is marked by the Special Examiner, "Defendants' Exhibit before the Special Examiner, No. 48," and a certified copy thereof so far as related to the lands involved in this suit, is annexed hereto.)

Mr. Redding—Defendants offer in evidence List No. 71, entitled, "Land Selected by the Southern Pacific Railroad Company, granted limits," and ask that it be marked, "Defendants' Exhibit before the Special Examiner, No. 49."

(Same objection.)

(List No. 71, entitled, "Lands Selected by the Southern Pacific Railroad Company, granted limits," is marked by the Special Examiner, "Defendants' Exhibit before the Special Examiner, No. 49," and a certified copy thereof so far as relates to the lands involved in this suit, is annexed hereto.)

Q. Are all these lists of granted lands that defendants have offered in the form prescribed by the Land Department of the Government?

(Same objection.)

A. They are.

Mr. Redding—Defendants next offer List No. 1, entitled "Lands Selected by the Southern Pacific Railroad Company in Los Angeles Land District, State of California, indemnity limits," and ask that the same be marked, "Defendants' Exhibit before the Special Examiner, No. 50."

Mr. Call—We will object as incompetent, immaterial and irrelevant, and upon the further ground

that the lands therein described were granted to the Atlantic and Pacific Railroad Company by the Act of Congress of July 27th, 1866, and were withdrawn for that company before this application was made and before the map of definite location of the Southern Pacific Railroad Company was filed, and upon the further ground that this application to select indemnity lands does not appear to have been approved by the Secretary of the Interior or Commissioner of the General Land Office, and upon the further ground that it does not appear to have been acted upon by any competent officer of the Interior Department, and upon the further ground that it is not the best evidence of the matters sought to be adduced.

(List No. 1, entitled "Lands selected by the Southern Pacific Railroad Company in Los Angeles Land District, State of California, indemnity limits," is marked by the Special Examiner "Defendants' Exhibit before the Special Examiner, No. 50," and a certified copy thereof so far as relates to the lands involved in this suit is annexed hereto.)

Mr. Redding—Q. Did you as Land Agent of the Southern Pacific Railroad Company present this list to the Register and Receiver for the purpose of obtaining patents for the lands therein set forth?

(Same objection.)

A. I did not; Benjamin B. Redding, the Land Agent of the Company at that time, did.

Q. What is the date that that list is certified by the Land Agent?

A. He made affidavit to the correctness of it on the 20th of January, 1876.

Q. What is the date that the approval of the Register and Receiver is given?

(Same objection.)

A. The date of the approval by the Register and Receiver, is January 28th, 1876.

Q. Will you please read that approval?

(Same objection.)

A. (Reads):

"United States Land Office,
Los Angeles, Cal.,
January 28th, 1876.

We hereby certify, that we have carefully and critically examined the foregoing list of lands claimed by the Southern Pacific Railroad Company under the grant to the said Southern Pacific Railroad Company by Acts of Congress, approved March 3, 1871, July 27th, 1866, July 25th, 1868, and June 28th, 1870, above mentioned, and selected by Benjamin B. Redding, the duly authorized agent, and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify, that the filing of said list is allowed and approved, and that the whole of said lands are surveyed, public lands of the United States, and within the limit of the exterior ten mile indemnity belt on each side, and that the same are not, nor is any part thereof returned and denominated as mineral land or lands, nor claimed as swamp lands, nor is there any homestead, pre-emption, State or other valid claim to any portion of said lands on file or record in this office. We further certify that the foregoing list shows an assessment of the fees payable to

us allowed by the Act of Congress, approved July 1st, 1864, and contemplated by the circular of instructions, dated January 24th, 1867, addressed by the Commissioner of the General Land Office, to Registers and Receivers of the United States Land Offices, and that the said company have paid to the undersigned, the Receiver, the full sum of three hundred and ninety-six and 50-100ths (\$396.50) dollars in full payment and discharge of said fees.

ALFRED JAMES, Register,
J. W. HAVERSTICK, Receiver."

Mr. Redding—We will have a certified copy of this exhibit, as of all the others, of lists of lands selected, certified by the Examiner, and covering only those lands therein which are involved in this suit.

Mr. Redding—We also offer in evidence List No. 25, entitled "List No. 25, Lands selected by the Southern Pacific Railroad Company, indemnity limits, Branch Line," and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 51."

(Same objection.)

(List No. 25, entitled "List No. 25, Lands selected by the Southern Pacific Railroad Company, indemnity limits, Branch Line," is marked by the Special Examiner "Defendants' Exhibit before the Special Examiner, No. 51," and a certified copy thereof so far as relates to the lands involved in this suit is annexed hereto.)

Q. When was this list certified to be correct?

(Same objection.)

A. The correctness of this list was sworn to by me on the 28th of September, 1887, and it was approved

by the Register and Receiver in Los Angeles on the 3rd of October, 1887, J. D. Bethune, Register, and L. H. Polk, Receiver.

Mr. Redding—Q. Referring to all of these exhibits just introduced, commencing with Exhibit 39, and running up in direct progression to Exhibit No. 51, will you state whether you know of your own knowledge that all of the land therein set forth was sought to be patented as being lands within the 20 and 30-mile limits of the grant to the Southern Pacific Railroad Company of March 3rd, 1871, and being lands which were opposite to constructed portions of the road at the time the lists were presented to the Register and Receiver asking for patents?

(Same objection.)

A. They were.

Q. Defendants' Exhibits 50 and 51, being for lands in the indemnity limits, show that the lands sought to be patented and selected are for lands in lieu of lands lost in the granted limits?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and upon the further ground that the lands therein described were granted to the Atlantic and Pacific Railroad Company by the Act of Congress of July 27th, 1866, and were withdrawn for that company before this application was made, and before the map of definite location of the Southern Pacific Railroad Company was filed, and upon the further ground that this application to select indemnity lands does not appear to have been approved by the Secretary of the Interior or Commissioner of the General Land Office, and upon the fur-

ther ground that it does not appear to have been acted upon by any competent officer of the Interior Department, and upon the further ground that it is not the best evidence of the matters sought to be adduced, and the further ground that the question calls for a judicial determination by the witness of a matter which has been placed by law within the exclusive cognizance of the Interior Department of the United States.)

A. They do.

CROSS-EXAMINATION (Resumed.)

Mr. Call—Q. Referring to the question which was put to you on your previous cross-examination, asking you to produce a list of the unpatented lands which had been deeded by the defendant Railroad Company; have you produced such a list?

A. I have not; for there is none such; the company has not issued any deeds for unpatented lands.

(In Defendants' Exhibit before the Special Examiner, No. 40, the witness states and it appears that the first two pages therein are not a part of the list.)

Mr. Call—Q. Do these lists of lands applied for by the defendant Railroad Company which have been offered in evidence, marked Exhibits Nos. 39 to 51, inclusive, contain all the lands which the Southern Pacific Railroad Company have applied to select for patent or for approval under the grant of 1871, so far as involved in this suit?

A. They do.

Q. Are all those lands embraced within the limits of the grant to the Southern Pacific Railroad Company? A. They are.

Q. I have noticed in list marked "Defendants' Exhibit before the Special Examiner, No. 42," applications for patents for lands in granted limits," that you have applied to select, or applied for patent, for Section 1, Township 6 South, Range 3 West, and for parts of Section 3, in Township 6 South, Range 3 West; I ask you to examine the copy of the map filed by the defendant Railroad Company in 1871, and state whether those tracts of land are within the granted limits as shown by that map?

(Question objected to by Mr. Redding as incompetent and immaterial, for the following reasons: That the lands applied for as shown in that list are applied for as of a date after the construction of the road necessarily; that in the construction of the road there must necessarily be slight deviations from the designation of route as shown upon the map filed on April 3rd, 1871, which was prior to construction, and therefore the boundaries of the grant as shown upon the map of the designated route of April 3rd, 1871, possibly may not include some of the land that is afterwards shown to be within the limits of the grant after construction; therefore the question is immaterial; and on the further ground that the bill of complainant, the Government in this case, alleges that the lands in controversy are within the limits of the grant to the Southern Pacific Railroad Company, and claimed by them as such.)

A. While those lists embrace all the lands involved in Case 184, they also embrace other lands outside those limits, so it may be quite possible that the descriptions of the tracts you have called my attention to

are outside of the limits of the lands involved in Case 184.

Q. The question was to examine the copy of the map filed by the defendant Railroad Company in 1871, and state whether those tracts of land are within the granted limits as shown by that map.

Mr. Redding—Is that land involved in this suit you are now speaking of?

Mr. Call—I didn't look to see. It is in the list here that you offered.

(Same objection.)

A. It is in the indemnity limits.

Mr. Call—Q. Is it within the granted limits?

(Same objection.)

A. It does not appear to be within the granted limits.

Q. It is outside of the granted limits then?

(Same objection.)

A. Outside of the granted limits as delineated on the map of 1871.

Q. And you selected it as granted lands?

(Same objection.)

A. They are within the granted limits.

Q. As shown by what?

(Same objection.)

A. As shown by the map of the Southern Pacific R. R. Co., showing the 20 and 30 mile lateral limits in Los Angeles Land District, sent to the Southern Pacific Land Office by S. S. Burdett, Commissioner of the General Land Office.

Q. Under what date?

(Same objection.)

A. It was received at the Land Office on the 30th of December, 1875.

Q. Then the lands selected as granted lands are within the granted limits, as shown by the map filed in 1875, and are not within the granted limits as shown by the map filed in 1871?

(Same objection.)

A. It seems so, in some instances.

Q. Well, in this instance?

(Same objection).

A. In this instance it does. This map, Special Examiner's Exhibit "F," is that which was sent to the Land Office of the Southern Pacific Railroad Company by the Commissioner of the General Land Office for the purpose of showing the lateral limits of the two grants to the Southern Pacific Railroad Company, to-wit, the grants of 1866, and also the grant of March 3, 1871.

Q. Does it also contain the line of route?

A. It also contains the line of route of the road.

Q. According to the map filed in 1871 by the Railroad Company?

A. That I do not know; it purports to show it, I presume.

Q. Then in making your applications for selections you were guided by the map of definite location, or the later map filed in the General Land Office?

(Question objected to by Mr. Redding as leading and not proper cross-examination, misleading and also as incompetent, immaterial and irrelevant; that it is not proper cross-examination, and misleading, because the question intimates that there is a legal conclusion to

be attached to certain maps filed, namely that they are maps of definite location. There is no such designation upon any of the maps, and that is not for the counsel to infer. It is incompetent, immaterial and irrelevant, for the reasons stated in the last objecti—)

A. I was guided by the official maps that were sent to me by the Commissioner of the General Land Office.

Q. That is referring to the maps fixing the definite lateral limits as shown by the exhibit heretofore offered, marked Exhibits "G", "H" and "I"?

(Same objection.)

A. The maps which were sent to me showing the adjusted lateral limits of the grant in the locality described in them, marked in this case, Exhibit before the Examiner, "G", "H" and "I".

Q. Can you tell me whether the Southern Pacific Railroad Company has received any patents for, or whether there has been approved selections of lands in Sections 25, 27, 29, 33, 35, or in either of those Sections in Township 6 South, Range 5 West, San Bernardino Base and Meridian.

Mr. Redding—Q. Are those lands involved in this suit, Mr. Call?

Mr. Call—I believe not.

Mr. Redding—Then I object to the question as being incompetent, immaterial and irrelevant.

Mr. Call—You can tell by a reference to your books, perhaps?

The Witness—Yes, sir.

Mr. Call—You may refer to the books; it will not be necessary to put the books in evidence.

A. On examination of the record, I find that patent has been received for all of Section 25, except the southwest quarter.

Q. Do you mean a patent or approved selection?

A. I mean a patent.

Q. Do you mean to say a patent?

A. I mean to say a patent.

Q. Has been received by the company?

A. Has been received by the company for all of Section 25, except the southwest quarter, on which a man named Jonathan A. Morrill filed a declaratory statement alleging settlement on the land February 24th, 1884; it has also a patent for Section 27; it has also a patent for all of Section 29, outside of El Cariso grant, except the north half of the southwest quarter, on which Phillip B. Sutton wanted to file; a hearing was ordered by the Commisioner, but Sutton failed to appear at the hearing, and his application to file was canceled; there is also a patent for 520 acres of Section 35, and for the north half of southeast quarter of Section 33; the remainder of the last two sections being outside of the limits of the grant to the Southern Pacific Railroad Company; those are included in Patent No. 23.

Q. When was it issued to the company?

(Same objection.)

A. It was issued on the 5th day of November, 1892.

Q. State whether those tracts of land which have been patented to the company in those sections are situated within or without the limits shown upon the map of 1871?

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(Same objection.)

A. They seemed to be outside the limits.

Q. Is it not a fact that they are outside?

(Same objection.)

A. As far as this map is concerned, I think they are.

Q. They are, then, outside of the 30 mile limits?

(Same objection.)

A. They are outside of the 30 mile limits.

Q. Referring to the map of permanent withdrawal, according to the definite location and construction of the Southern Pacific Railroad marked "Exhibit before the Examiner, 1", state whether those lands patented in those sections are within or without the 30 mile limits as shown by that map?

(Same objection and the further objection that the counsel is describing in his own language a map which states for itself what it is, and is thus making an effort to inculcate in the record evidence concerning the nature and quality of a map which is not intended necessarily by its contents or description.)

A. 25 and 27 seems to be inside of the 30 mile limit; the east half of 29 is also inside of the 30 mile limit; the north half of the northeast quarter is also inside of the 30 mile limit, and all 35 except the southeast quarter of the southeast quarter and the south half of the southwest quarter.

Q. Then all the lands patented in those sections are embraced within the 30 mile limits as shown by the map last referred to showing the constructed and definitely located railroad?

(Same objection.)

A. All the lands that I have described in answer to that question.

Q. As patented?

(Same objection.)

A. Yes, sir; as patented.

Q. Referring to the lists of lands applied for by the Company, heretofore offered and marked "Defendants' Exhibit before the Special Examiner, Nos. 39 to 51, inclusive," I observe that it is marked all through these lists "A. & P. granted" in lead pencil. What does that refer to?

A. It refers to the lands involved in this suit, and was made since the commencement of it.

Q. Explain what the words "A. & P. granted" means?

A. I wanted to have a ready reference to the lands embraced in this suit, and as the most convenient way of having it since the commencement of this suit, I, or the clerk under me, have marked upon the lists "A. & P. granted" or "A. & P. indemnity," meaning the granted limits of the Atlantic and Pacific withdrawal, claimed by the Government, or Atlantic and Pacific Indemnity as claimed by the Government.

Q. "A. & P." means Atlantic and Pacific Railroad.

A. "A. & P." means Atlantic and Pacific Railroad Company.

RE-DIRECT EXAMINATION.

(Resumed.)

Mr. Redding—Q. Those pencil memoranda that you are just testifying about, are they a part of the lists themselves, or simply memoranda for reference that

you have put upon your office originals so as to note what lands were in controversy?

A. They are no part of the lists whatever; they were put upon those lists lately for the purpose solely of reference and for convenience.

An adjournment was then taken by consent of counsel until Wednesday, September 20th, 1893, at 10:30 A. M.

San Francisco, September 20th, 1893.

CROSS-EXAMINATION OF JEROME MADDEN.

(Resumed.)

Mr. Call—Q. I think I asked you, but I will repeat the question, whether Defendants' Exhibit before the Special Examiner, No. 2, contains all the lands claimed by the defendant railroad company in suit, whether that shows what the status is of all the tracts, or whether it is only a partial list?

A. It shows all as far as suit 184 is concerned.

Q. Are there any lands in that list that are not within the limits of the Southern Pacific Grant of 1871? A. I do not think there are.

Q. We have been discussing and elucidating on this examination various tracts of land, some of which were situated outside of the 30 mile limits as shown by the map of general route filed in 1871, but were inside of the 30 miles limits as shown by the definite lines which were established according to the railroad as constructed; I call your attention on page 16 to Defendants' Exhibit before the Special Ex-

aminer, No. 2; please examine that page of the exhibit and state what the status is as shown by that exhibit of Sections 7, 9, 11, 13, 15 and 17, in Township 7 North, Range 19 West, San Bernardino Base and Meridian; as shown by that exhibit are those sections in the granted or the indemnity limits?

A. 7, 9 and 11, 7 N., 19 W., are shown to be in the indemnity limits, that is the south half of those sections, and all of Sections 13, 15 and 17 are in the granted limits.

Q. Examine the Exhibit before the Special Examiner, "G," being a segment of the map of definite location of the Southern Pacific Railroad from Mojave to Los Angeles, and containing the temporary and permanent withdrawal limits, showing the limits of the temporary withdrawal of 1871, and the permanent withdrawal, and I ask you to state whether those sections of land are in the granted and indemnity limits as stated by you?

Mr. Redding—Defendants object to the form of the question put by the Government counsel, in that the Government counsel insists on giving his own definition of the character of maps and exhibits, thereby endeavoring to inject into the evidence a conclusion as to what an exhibit purports to be; and we respectfully ask that the Government counsel refer to an exhibit by its number and not by a series of explanatory remarks concerning the exhibit; and if the Government counsel continues to do this we shall ask the Court to strike those remarks from the record as impertinence.

Mr. Call—I only wish to identify the map by what it purports to show as well as by the exhibit number.

Mr. Redding—On behalf of the defendants, we do not care to have you purport to show by your own testimony as counsel what the map is or may be. The exhibits are sufficiently designated by their numbers or letters, and not by definitions of counsel.

Mr. Call—I shall refer to any of the exhibits in this case according to what I think they are, and identify them in such a way as I think is necessary to show what exhibit I am referring to, and I shall not require any assistance in that matter.

Mr. Redding—I shall move to strike out any definitions of exhibits given by the Government counsel. Defendants furthermore object to the question as irrelevant, incompetent and immaterial on the ground stated yesterday, that the lands now under discussion are alleged by the bill to be within the limits of the Southern Pacific Railroad Company's grant.

A. They are all in the adjusted indemnity limits; a portion of the lands in Township 7 North, Range 19 West, Sections 7, 9 and 11, are within the granted limits of the A. & P. withdrawal; the 13, 15 and 17 are shown to be outside temporary 30 mile limits, but within the indemnity, according to the adjusted limits. Evidently there is an error in List No. 2, in that it states that these are within the granted limits.

The Witness. (After examination.) On examination I find that the answers that I gave are incorrect, and that the statement in Exhibit 2 is entirely correct. You will perceive that State-

ment No. 2 gives the tracts that are within the granted and indemnity limits of the withdrawal for the Atlantic and Pacific Railroad, and also it gives the limits of the withdrawal for the Southern Pacific Railroad Company Branch Line.

Mr. Call—Q. This statement gives the limits of withdrawal?

(Same objection).

A. The lands that are within the limits of the A. & P. withdrawal, and also the lands that are within the limits of the withdrawal for the Southern Pacific Railroad Company.

Q. What withdrawal of the Southern Pacific have you reference to?

(Same objection.)

A. The withdrawal of April 3, 1871.

Q. It gives the limits of that, does it?

(Same objection.)

A. It gives the lands that are within the limits of that, both for the Atlantic and Pacific and for the Southern Pacific also.

Mr. Redding—Q. You mean the exhibit does?

A. The exhibit does, Exhibit No. 2.

Mr. Call—Yesterday on your examination we discovered various tracts which were outside of the limits of withdrawal of 1871, but within the limits of the permanent withdrawal.

Mr. Redding—I object to the words "permanent withdrawal."

Mr. Call—It is so designated upon the official plats.

Mr. Redding—Speak of the exhibit if you wish to avoid any discussion of the matter.

Mr. Call—Q. You stated in preparing this list, Exhibit No. 2, that you were guided by the lines designated as lines of definite withdrawal, I will ask you now what you used to prepare this by? Which withdrawal?

(Same objection.)

A. I used the maps that were sent to me from the Interior Department to the adjusted limits known in this case as Exhibit "G," "H" and "I."

Q. Proceed with your statement.

(Same objection.)

A. Awhile ago I stated that Sections 7, 9 and 11, were within the indemnity limits of the Southern Pacific Railroad Company's withdrawal; and that Sections 13, 15 and 17, were within the granted limits; in that I have unwittingly made an error; all the sections that I have named are within the indemnity limits of the withdrawal for the Southern Pacific Railroad Company, as shown by Examiner's Exhibit "G," and that the same lands, that is to say, the south half of Section 7, the south half of Section 9, the south half of Section 11, Township 7 North, Range 19 West, are also in the indemnity limits of the withdrawal for the Atlantic and Pacific Railroad, and that all of Sections 13, all of 15 and all of 17, are within the granted limits of the Atlantic and Pacific Railroad withdrawal.

Q. And the words "granted limits" there refer to the Atlantic and Pacific withdrawal?

A. It does; you can see by the heading to the columns in the statement to what particular withdrawal it refers; you will notice here that these are all shown on this statement to be within the indemnity limits of the Southern Pacific Railroad withdrawal.

Q. State whether any of those sections are within the 30 mile limits of the Southern Pacific grant, as shown by the temporary withdrawal made upon the map of 1871?

(Same objection.)

A. All those sections named by me are outside of the 30 mile limit, as shown by temporary withdrawal on Examiner's Exhibit G.

Q. State whether that corresponds to the line of the 30 mile limit, as defined on the map of general route, marked Examiner's Exhibit "F."

Mr. Redding—I move to strike out the words "general route" and allow the question to remain by stating the number of the exhibit; and I re-submit that the counsel has no right to draw his own conclusion of the nature of the exhibit.

A. I do not know, for I have not made a comparison.

Mr. Call—Q. I will ask you to make a comparison and then answer the question.

The Witness—I will do so.

(The witness makes the comparison and the question is repeated, as follows :)

Q. State whether that corresponds to the line of the 30 mile limit as defined on the map of general route marked Examiner's Exhibit "F"?

(Same objection.)

A. I compared the line on the two maps, and I find that that of the temporary 30 mile limit as shown in Township 7 North, 19 West, in exhibit before the Examiner "G" is not the same; the line that runs east and west in that township is one mile further north in Exhibit "F" than it is on the map of 1871.

Q. How do you account for that discrepancy?
(Same objection.)

A. I cannot account for it, except possibly in the way of its being a clerical error.

RE-DIRECT EXAMINATION.

(Resumed.)

Mr. Redding—Q. The exhibits to be offered, entitled, "This is intended to be Exhibit before the Special Examiner, 'G', also, 'This is intended to be Exhibit before the Special Examiner, 'H', also, 'This is intended to be Exhibit before the Special Examiner, 'I'", were these sent to your department officially, and exemplified or certified by the Commissioner of the General Land Office for your guidance? A. They were.

Q. Do they appear to have been made under authority of the Interior Department?

A. They were made under the authority of the Interior Department, because the certificate of J. A. Williamson, Commissioner of the General Land Office, with the seal of that department, is attached to it.

Q. Were the boundaries thereon indicated made by your Department or by the Interior Department?

A. They were made by the Interior Department.

Q. Turn to Exhibit "F," will you state whether the boundaries thereon indicated showing the lateral limit of the grant to the Southern Pacific Railroad Company, under Act of Congress of July 27th, 1866, and also under the Act of Congress of March 3, 1871, were made by your Department, or were made by the Interior Department and forwarded to your Department for use?

A. They were official maps made by the Interior Department, and forwarded to the Southern Pacific Railroad Company for the guidance of its Land Department.

Mr. Redding—Mr. Call, is it agreeable to you that the Examiner shall substitute the original of Exhibit No. 2, now on file with the Clerk in Los Angeles, and attached to the answer in this case, No. 184, instead of the press copy that we have been using on this examination?

Mr. Call—I have no objections, but I will ask you as a favor to let me have that for my use until we get through with the case.

Mr. Redding—Certainly.

(The witness states that only four of the patents heretofore introduced in evidence and marked as Exhibits before the Special Examiner, contain lands involved in this suit, and it is agreed between counsel that such patents heretofore introduced as do not contain lands involved in this suit, together with the questions and answers touching the same, may be stricken from this record by the Special Examiner drawing a line through the same, and that certified copies of the four patents containing lands involved in this case may be made and attached hereto in accordance with the previous agreement.)

San Francisco, September 22d, 1893.

CROSS-EXAMINATION OF JEROME MADDEN.
(Resumed.)

Mr. Call—Q. Have you produced a list showing the sales and contracts for sales of the Southern Pacific Railroad Company of lands involved in this suit which have not been patented?

A. I have; here it is (producing.)

Q. Does this list show all the sales made by the Southern Pacific Railroad Company and contracts for sales of these lands in suit herein, so far as unpatented, showing the total price to be paid and the amount which has actually been paid to the company thereon? A. It does.

Mr. Call—I offer the list in evidence, and ask that the same be marked "Exhibit before Special Examiner J."

(The document offered in evidence by Mr. Call, referred to by the witness, and endorsed, "List of Unpatented Lands involved in Case No. 184, United States vs. S. P. R. R. Co., which have been sold by said company" is marked by the Special Examiner "Exhibit before the Special Examiner, J. Stephen Potter, Special Examiner.")

Q. I think you said that some lands had been quitclaimed by the company, a few tracts, have you produced a list of those?

A. I have; here it is (producing.)

Q. Do these two lists include all the lands which have been sold and contracted to be sold, quitclaimed or otherwise conveyed, of the unpatented lands involved in this case?

A. Yes, sir.

Mr. Call—I offer the list in evidence and ask that the same be marked "Exhibit before the Special Examiner, K."

(The document offered in evidence by Mr. Call, and referred to by the witness, and endorsed "List of Lands involved in Case No. 184, United States vs. S. P. R. R. Co., for which quitclaim deeds have been issued by said Company," is marked by the Special Examiner, "Exhibit before the Special Examiner, K, Stephen Potter, Special Examiner.")

Q. Do those lists correctly set forth the matters therein purported to be shown?

A. They do; they are absolutely correct.

RE-DIRECT EXAMINATION.

(Resumed.)

Mr. Redding—Q. Do you know whether or not the amounts on these exhibits that are stated to have been received by the Southern Pacific Railroad Company were paid to it by the parties therein named?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. They or their assignors have paid the amounts.

Q. Has the Southern Pacific Railroad Company received the amounts therein named to have been paid?

(Same objection.)

A. It has.

Q. Do you know whether or not the amounts were paid by the individuals therein named in good faith?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and the further objection

that the question calls for the opinion of the witness, and is not the best evidence of the matter sought to be adduced.)

A. All the sums therein mentioned were actually paid in good faith.

Q. Do you know whether or not the purchasers herein named, or their assignors and their assignors, are *bona fide* purchasers for value received from the Company of the lands involved and for the amounts therein declared to have been paid?

(Same objection.)

A. I know that they are.

On page 167 I desire to correct my testimony by giving in answer as follows, instead of the answer appearing on the 5th and 6th lines of page 168: I said I had heard that there was, as to lands of the *main* line, covered by the withdrawals for the A. & P. and S. P. Companies, but I did not know it.

JEROME MADDEN.

Testimony of Charles F. Crocker:

Charles F. Crocker, called as a witness on behalf of the defendants, being duly sworn, testifies as follows, said testimony being taken on September 14th, 1893, and inserted at this point in the record for convenience in signing.

DIRECT EXAMINATION.

Mr. Redding—Q. Are you an officer of the Southern Pacific Railroad Company? A. I am.

Q. What office do you hold in that Company?

A. President.

Q. How long have you been President of the Company? A. At least five years.

Q. Were you an officer of the Company other than President prior to that time?

A. I was one of the Vice-Presidents.

Q. How long have you been an officer of the Company and connected with it, covering what period of years?

A. A director or executive officer for from ten to twelve years.

Q. The title to this suit is The United States of America against the Southern Pacific Railroad Company and others, and the suit involves a land grant made by Congress to the Southern Pacific Railroad Company, dated March 3d, 1871, extending from Tehachapi by way of Los Angeles to Fort Yuma; is that the Company of which you are President of which you are speaking? A. It is.

Q. Do you know whether or not the identity of the Southern Pacific Railroad Company has been changed, or whether the Company itself has been changed by any of its Articles of Amalgamation and Consolidation which it has filed during the last twenty years, or whether it has been the intention of the officers of the Company to maintain the same corporation and the same identity?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence, and as involving a conclusion of law.)

A. The identity and character of the Southern Pacific Railroad Company of California was preserved in the amalgamation and proceedings which have been

held during my term of office as a Director and executive officer in that Company; I personally instructed the officers of the Law Department who prepared the papers in the proceedings which were had in 1888, at the time various corporations were amalgamated into the Southern Pacific Railroad of California—

Mr. Redding (interrupting)—That is the defendant in this action, the Southern Pacific Railroad Company?

The Witness—Yes, sir; the Company to which the United States Government granted certain sections of land.

A. (continuing) —to preserve the character and identity of that corporation; it was reported to me that the law permitted that to be done, and they were instructed to proceed upon that line.

Q. Do you know as a fact whether or not there was an intention on the part of the Directors of the Southern Pacific Railroad Company, and the executive officers, and those in authority, to preserve the identity and same character of the Southern Pacific Railroad Company to which Congress made this land grant, or otherwise?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence, and as calling for a conclusion of law; and upon the further ground that the intentions of the several Companies amalgamating can be gathered and shown only by the proceedings had upon consolidation and by the written evidence of the amalgamation of the roads.)

A. It was intended to preserve the identity and character of the Southern Pacific Railroad Company

of California as it existed previous to that amalgamation, and the legal officers of the Company were instructed to prepare the papers accordingly.

Q. Were you present at the conferences of the Directors of the Company anterior to taking in these other corporations?

(Same objection.)

A. I was present.

Q. Did you take part in the proceedings?

(Same objection.)

A. I did.

Q. Will you state whether or not you gave your own views at those meetings as to what you wanted done as an officer and a Director of the Company?

(Same objection.)

A. I did, according to my answers already given to these questions.

Q. Do you know whether or not the Land Department of the Southern Pacific Railroad Company has remained the same ever since its inception, so far as referring to one land grant and one corporation, or whether it has been changed?

(Same objection.)

A. It has remained the same.

Q. Were you an officer of the company, or in anywise connected with it during the period when prior amalgamations were made, for instance the one of 1873?

(Same objection.)

A. I was not.

CROSS-EXAMINATION.

Mr. Call—Q. Were you an officer of the company, that is, a general officer, at the time of the amalgamation of 1874? A. No sir, I was not.

CHAS. F. CROCKER.

Testimony of William Hood:

William Hood, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. Redding—Q. What is your occupation?

A. Civil engineer.

Q. Where do you reside?

A. In San Francisco.

Q. How long have you been in the business or profession of civil engineer? With particular reference to railroad building?

A. In railroad building since the 3rd of May, 1867.

Q. What is your present regular employment?

A. Chief Engineer of the Southern Pacific Company, and of each of the leased corporations in detail.

Q. Does that include the Southern Pacific Railroad Company? A. It does.

Q. When did your first employment with the Southern Pacific Railroad Company, one of the defendants herein, commence?

A. It was in the fall of 1871 and the spring of 1872.

Q. Where did you study your profession?

A. In Dartmouth College, New Hampshire.

Q. Did you graduate from that college?

A. Yes, sir.

Q. Have you been continuously engaged in the profession which you have named since that time?

A. I have, with the exception of a very few months of leave of absence.

Q. Do you hold a diploma as a graduate from Dartmouth College?

A. I hold a diploma as a graduate of Dartmouth College.

Q. Are you familiar with the railroad that runs from Tehachapi by way of Los Angeles to Fort Yuma?

A. Yes, sir; very familiar.

Q. Did you take part in its construction?

A. I did.

Q. What is the gauge of that railroad?

A. Four feet eight and a half inches.

Q. Will you state what kind of gauge that is known to be. A. Ordinarily called standard.

Q. The Acts of Congress in reference to this road and the Texas Pacific Railroad speak of those roads being constructed on a standard gauge. Do you know of your own knowledge whether the gauge of this road of the Southern Pacific Railroad Company from Tehachapi by way of Los Angeles to Fort Yuma is of that gauge?

(Question objected to by Mr. Call as incompetent and immaterial, and not the best evidence.)

A. I do.

Q. Did you take part in the construction of this line of railroad known as the Branch Line road of the Southern Pacific Railroad Company, one of the de-

fendants herein, from Tehachapi by way of Los Angeles to Fort Yuma?

(Same objection.)

A. I did.

Q. In what capacity?

(Same objection.)

A. As Assistant Chief Engineer of the Southern Pacific Railroad Company.

Q. Were you out at the front in the building of this road?

(Same objection.)

A. I was constantly.

Q. Between what years was this road building between the points named?

(Same objection.)

A. It was built from San Fernando Station, now known as Fernando Station, to Colton, in the years 1873 and 1874; it was built between Tehachapi Pass and San Fernando in the years 1875 and 1876; it was built between Colton and Indio in the years 1875 and 1876; it was built between Indio and Yuma in 1877.

Q. In what year did you first ride over the entire road between Tehachapi and Fort Yuma, by the way of Los Angeles, if you recall?

(Same objection.)

A. In 1877.

Q. Did you go out over the road or come in contact with the Commissioners appointed by the Government to inspect the building of this road after its completion?

(Same objection.)

A. Not between Tehachapi Pass and Fort Yuma, that I know of.

Q. You did not, then?

(Same objection.)

A. No, sir; I did not.

Q. What things did you do in the building of this road on behalf of the Southern Pacific Railroad Company?

(Same objection.)

A. I was in general charge of the location and construction of all parts of it, excepting between San Fernando and Indio.

Q. Do you know whether or not this road was constructed in a complete and workmanlike manner?

(Same objection.)

A. I do; I know that it was.

Q. Can you state of your own knowledge whether this road has continued to be from the time of its completion down to the present time and is now a road thoroughly equipped and competent to transport trains of cars carrying all sorts of merchandise and Government munitions and postal service?

(Same objection.)

A. It is a road of that character.

Q. Are you familiar with the territory of California between the Colorado River at or near the 35th parallel, otherwise known as the Needles, and thence through the State in a westerly direction?

(Same objection.)

A. I am very familiar with it.

Q. Have you been over the ground yourself?

(Same objection.)

A. Many times.

Q. The complainant in this case, namely, the United States, before E. H. Lamme, Examiner, on an order

of reference introduced several maps, certified under seal of the Commissioner of the General Land Office, purporting to show an attempted location of a line of road by the Atlantic and Pacific Railroad Company, not only in the State of California, but through other States; two of the maps offered in evidence by the Government were as follows: a map of the Atlantic and Pacific Railroad from San Miguel Mission in California to a point on the line between Los Angeles and Santa Barbara Counties, California; and second a map from a point in Township 7 North, Range 7 East, S. B. M., California, to the Colorado River, the same being marked Master's Exhibit 131. In Case 68, another case brought by the Government against this railroad company, and now marked in the case at bar, "Examiner's Exhibit No. 9"; the Government also offered in evidence copy of a map certified under seal of the Commissioner of the General Land Office of the Atlantic and Pacific Railroad from a point on the western boundary of Los Angeles County, California, to a point in Township 7 North, Range 7 East, San Bernardino Meridian, the same being marked Master's Exhibit 127, in Case 68, entitled United States of America against the Southern Pacific Railroad Company *et al.*, and marked Examiner's Exhibit, No. 10, in the case at bar; have you examined those maps, or maps certified to be, by the Commissioners of the General Land Office, the same maps?

(Same objection.)

A. I have, both of those maps and the maps certified by the Commissioner of the General Land Office.

Q. Have you examined this last exhibit, known as Examiner's Exhibit, No. 10?

(Same objection.)

A. I have.

Mr. Redding—Mr. Call, I want to refer to this exhibit in Case 68, known as Master's Exhibit 127, and introduced by you in this case as Examiner's Exhibit, No. 10, and now laid out for you from the record in Case 68, for the purpose of introducing maps on a larger scale, covering the same territory, and certified to by the Commissioner of the General Land Office.

Q. Do you recognize this as the map of the Atlantic and Pacific Railroad Company, from the western boundary of Los Angeles county to a point in Township 7 North, Range 7 East, S. B. M.

(Same objection.)

A. I do.

Q. Have you the same map upon a larger scale, certified to by the Commissioner of the General Land Office?

(Same objection.)

A. I have.

Q. Will you please produce it?

(Same objection.)

A. It is made up of the easterly portion of this map, this being the westerly boundary of Los Angeles county referred to in a former exhibit, and this map, the two together form it.

Mr. Redding—The defendants now offer in evidence exemplified copy of a diagram showing the alleged line of location of the Atlantic and Pacific Railroad Company and the limits of the withdrawal upon said alleged line of location for the benefit of the Atlantic and Pacific Railroad Company from San Miguel Mis-

sion to the western boundary of Los Angeles county, California, certified to by William A. J. Sparks, the Commissioner of the General Land Office, as being an exemplified copy of the one on file in the office of the Interior Department, and ask that it be marked, "Defendants' Exhibit before the Special Examiner, No. 52."

(The exemplified copy, showing the alleged line of location of the Atlantic and Pacific Railroad Company and the limits of the withdrawal upon said alleged line of location for the benefit of the Atlantic and Pacific Railroad Company from San Miguel Mission to the western boundary of Los Angeles county, California, certified to by William A. J. Sparks, the Commissioner of the General Land Office, as being an exemplified copy of the one on file in the office of the Interior Department, is marked by the Special Examiner "Defendants' Exhibit before the Special Examiner, No. 52.")

Mr. Call—The map offered appears to be an official diagram from the General Land Office showing the lateral twenty and thirty mile limits of the Atlantic & Pacific Railroad Company's line through a portion of the State of California, and I have no objections to the map being introduced in evidence for what it purports to be and for what it is worth.

Mr. Redding—The defendants next offer in evidence certified copy of a map of similar nature, continuing the alleged location of the line of road from San Miguel Mission East, through the County of Los Angeles and to a point in 7 North, 7 East, S. B. M. and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 53."

(The certified copy of the map referred to by counsel continuing the alleged location of the line of road from San Miguel Mission, east through the County of Los Angeles and to a point in Township 7 North, Range 7 East, San Bernardino Base and Meridian, is marked by the Examiner "Defendants' Exhibit before the Special Examiner, No. 53, Stephen Potter, Special Examiner.")

Mr. Call—The map here appears to be, and is certified by the Commissioner of the General Land Office to be a copy of a diagram showing the limits of the withdrawal for the Atlantic & Pacific Railroad Company over a portion of its line in California, and I have no objections to the map being introduced in evidence for what it is certified to be and for what it is worth.

Mr. Redding—Defendants next offer in evidence a certified copy of the map of the Atlantic and Pacific Railroad Company, showing an alleged location through the County of Los Angeles and part of San Bernardino, State of California, from a point on the west boundary line of Los Angeles County to a point near Township 7 North, Range 7 East, San Bernardino Base and Meridian, being an exact duplicate, properly certified, of the Examiners' Exhibit, No. 10, heretofore offered by the Government in this case, and being a copy of Masters' Exhibit, No. 127, in Case 68. This exhibit which I now offer, please understand, being exemplified copy of the map filed by the Atlantic & Pacific Railroad Company, and being offered here at this time because the certified copy offered by the Government is at present in Los Angeles. The one that is now

offered is also a certified and exemplified copy, and I ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 54."

And I would suggest, Mr. Call, that when this record is made up to present to the Court, that we at that time can take out one of these maps, and let the remaining one stand for both exhibits, so as not to have two identical copies of the same map in evidence.

Mr. Call—Of course there is no necessity for having duplicate copies of maps in the record.

(A recess was then taken by consent of counsel until two p. m.)

San Francisco, September 20th, 1893—2 p. m.

DIRECT EXAMINATION OF WILLIAM HOOD,

(Resumed.)

Mr. Call—I object to the introduction of the map as incompetent, immaterial and irrelevant, and as not being what it purports to be, and upon the further ground that the certificate of the Commissioner of the General Land Office attached to the map under seal of the Land Office, falsely and fraudulently states that this map was described in the departmental letter of March 9, 1872, as a map showing the preliminary location of the line of said railroad, when, in point of fact, as shown by the record herein, said letter of March 9, 1872, described this map as a map of definite location of the Atlantic and Pacific Railroad between said points, and showed that the map filed by the Atlantic and Pacific Railroad Company between said points in

1872 was filed by the Atlantic and Pacific Railroad Company as a map of definite location, and was accepted and received by the Secretary of the Interior as a map of definite location.

Mr. Redding—Do I understand that you object to the certificate on the map or to the map itself?

Mr. Call—I object to the whole thing—map, certificate and all—on account of the fraudulent statements in the certificate, because I do not know now what is true and what is not true.

Mr. Redding—By what right do you assume to state the certificate is fraudulent?

Mr. Call—By reason of the evidence in this case showing its falsity.

Mr. Redding—What evidence?

Mr. Call—The letters of the Secretary of the Interior and Commissioner of the General Land Office, which are referred to in the certificate attached to this map which you offer as Exhibit 54.

Mr. Redding—We submit the certificate and the map have been received direct from the Interior Department, and bear upon their face the evidences of their accuracy from that department under seal of the Interior Department.

Q. Will you please take Exhibit 54, and place it over Master's Exhibit 127, in the record of Case 68, which Master's Exhibit 127 is Examiner's Exhibit No. 10, introduced before Mr. Lamme in this suit by the complainant, and see whether the one corresponds to the other in exact delineation.

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence,

and upon the further ground that it is not competent to show by parol what judicial action has been taken by the Interior Department, nor whether they have received such a map as a sufficient map of definite location, or otherwise.)

A. It does correspond in all essential particulars.

Mr. Redding—Q. Is it drawn to the same scale.
(Same objection.)

A. It is drawn to the same scale.

Mr. Call—I wish to ask you Mr. Redding, particularly at this time, if it will be necessary to repeat objections, or if the words "same objection" shall apply to the previous objection as though it was recited at length?

Mr. Redding—I understand that it is stipulated between us that the words "same objection" include the last stated objection.

Q. Then if you take Defendants' Exhibit before the Special Examiner, No. 54, and proceed to testify from that, will it be a fact that you will be testifying from the same lineal measured map known as Master's Exhibit No. 127, in Case 68, or Examiner's Exhibit, No. 10, in this case?

(Same objection.)

A. It will.

Q. I wish you would take and place together Defendants' Exhibits before the Special Examiner, Nos. 52 and 53, so that the alleged line of route of the Atlantic & Pacific upon those two maps will proceed topographically, which exhibit will then be to the left and which to the right?

(Same objection.)

A. Exhibit No. 52 will be to the left and Exhibit No. 53 will be to the right.

Q. Joining those two exhibits together in the way that you have just stated, what line of road, and between what points of the State of California, do you find delineated therein?

(Same objection).

A. The surveyed line of the Atlantic & Pacific Railroad.

Q. What appears thereon?

(Same objection).

A. There appears thereon a red line marked, "Atlantic & Pacific Railroad."

Q. Between what points?

(Same objection).

A. Between San Miguel Mission and a point in Township 7 North, Range 7 East, San Bernardino Meridian.

Q. Now, taking up Defendants' Exhibit before the Special Examiner, No. 54, (or its equivalent, Examiner's Exhibit No. 10 in this case, or as otherwise known Master's Exhibit 127 in the record in Case 68) will you testify whether or not Exhibits 52 and 53 show the same delineation of an alleged line of route of the Atlantic and Pacific Railroad Company, except on a larger scale, as appears on the said Exhibit 54?

(Same objection.)

A. It does, it shows the same map in every way, excepting on a different scale.

Q. Which is the larger scale?

(Same objection.)

A. The larger scale is that of Exhibits 52 and 53.

Q. What is the scale of enlargement between Defendants' Exhibit No. 54 (or its equivalent, Examiner's Exhibit No. 10 in this case, or Master's Exhibit 127 in record of Case 68) and Defendants' Exhibit No. 52 and 53 showing the same alleged line of location?

(Same objection.)

A. Defendants' Exhibit before the Special Examiner, No. 54 is drawn to a scale of six miles to one inch; Defendants' Exhibits before the Special Examiner, No. 52 and No. 53, are drawn to a scale of four miles to one inch.

Q. Does the same delineation of alleged line of location appear on the earth's surface in both these two different scaled exhibits except one is on a larger and the other on a smaller scale?

A. It does.

Q. What portion of these two Exhibits 52 and 53 embraces what is known as Soledad Canyon.

(Same objection.)

A. Between a point in Township 4 North, Range 17 West, San Bernardino Base and Meridian, and a point in Township 5 North, Range 11 West, San Bernardino Base and Meridian.

Q. Have you examined and had examined by your department the alleged line of location of the Atlantic and Pacific Railroad Company as delineated on these maps with reference to the section lines, stakes and corners as they appear upon the earth's surface of recent dates.

(Same objection.)

A. I have.

Q. Between what points?

(Same objection.)

A. Between the points just mentioned, Township 4 North, Range 17 West and 5 North, Range 11 West, San Bernardino Base and Meridian.

Q. Were you enabled to find the section lines and stakes of the United States public surveys?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence, and upon the further ground that it is not competent to show by parol what judicial action has been taken by the Interior Department, nor whether they have received such map as a sufficient map of definite location, or otherwise; and the question is objected to upon the further ground that the map and line of route of the Atlantic & Pacific Railroad Company between the points mentioned, and across the State of California, having been officially accepted and approved by the Secretary of the Interior, such action is not open to question by third parties; and upon the further ground that such map and line of route of the Atlantic & Pacific Railroad Company having been accepted and approved by the Secretary of the Interior of the United States, acting judicially and in his discretion, is not subject to a collateral attack by these defendants, nor to question by these defendants at all; and upon the further ground that the lands involved in suit in this case having been withdrawn for the benefit of the Atlantic & Pacific Railroad Company and reserved, were accepted out of the grants to the Southern Pacific Railroad Company, made by the Act of Congress of March 3, 1871, as shown by the terms and conditions of said grant.)

A. Yes, in most instances, and always enough of such stakes were found to identify the position of any required object on the surface of the earth.

Q. Between the points last named, and having ascertained the corners, section lines, townships and ranges of the public surveys upon the earth's surface, did you endeavor to find whether or not the Atlantic & Pacific Railroad Company, or its agents, did locate upon the ground any surveyed line of route which would be practicable for the building of a railroad, as shown by said Exhibits 52, 53 and 54?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence, and upon the further ground that it is not competent to show by parol what judicial action has been taken by the Interior Department, nor whether they have received such map as a sufficient map of definite location or otherwise; and upon the further ground that the map and line of route of the Atlantic and Pacific Railroad Company between the points mentioned and across the State of California, having been finally accepted and approved by the Secretary of the Interior, such action is not open to question by third parties; and upon the further ground that such map and line of route of the Atlantic and Pacific Railroad Company having been accepted and approved by the Secretary of the Interior of the United States, acting judicially and in his discretion, is not subject to a collateral attack by these defendants, nor to question by these defendants at all; and upon the further ground that the lands involved in suit in this case having been withdrawn for the benefit of the Atlantic and Pacific Rail-

road Company and reserved, were excepted out of the grant to the Southern Pacific Railroad Company made by the Act of Congress of March 3, 1871, as shown by the terms and conditions of said grant; and upon the further ground that the question calls for the judgment and opinion of the witness upon a matter which has been conferred exclusively upon the Secretary of the Interior to determine; and upon the further ground that the exhibits referred to are not authentic maps showing the line of definite location of the Atlantic and Pacific Railroad.)

A. Yes; I determined upon the ground the position of the Atlantic and Pacific Railroad, as shown upon the maps comprised in Exhibits 52, 53 and 54 before mentioned, and had lines of levels run to show the vertical position of those points in reference to the sea level, and I found that it was entirely impracticable to build a railroad upon the line as shown on the maps of Exhibits Nos. 52, 53, and 54, and that beyond doubt no railroad engineer had ever made a survey in the position as shown on said maps.

Q. What number of employees were engaged in ascertaining these facts under your supervision?

(Same objection.)

A. Five.

Q. Who were they?

(Same objection.)

A. They were E. A. McFarland as assistant engineer, and the remainder were chain men and rod men, and their names can be furnished, if desired, but I have not them in mind at present.

Q. Are they men engaged in your employ in similar surveying business for other matters?

(Same objection.)

A. They are.

Q. Do you know whether they are competent to perform the technical work so as to obtain the results stated, and using the instruments required?

(Same objection.)

A. I have found them wholly competent on all the work they have ever undertaken to execute.

Q. Do you know whether or not the alleged line of location of the Atlantic & Pacific Railroad Company as delineated on Exhibits 52 and 53 on a larger scale, and Exhibit 54 (or its equivalent, Examiner's Exhibit, No. 40, in this case, and Master's Exhibit, No. 127, in cause 68,) when fitted to the surface of the earth and in reference to the township and range lines and section stakes as they appear upon said Exhibits 52 and 53, show a line of railroad route which would be practicable for the building of a road over which railroad trains could pass between the points last named, namely, Township 4 North, Range 17 West, and Township 5 North, Range 11 West, San Bernardino Base and Meridian?

(Same objection.)

A. I find between the easterly line of Township 4 North, Range 17 West, and a point in Township 5 North, Range 11 West, that it would be impracticable, and might fairly be said to be impossible, to build such a railroad as the question describes on the line of the Atlantic & Pacific Railroad as delineated on Maps 52, 53 and 54, in reference to the section and township lines as described.

Q. Was this work done under your supervision on the very ground that you are now speaking of to ascertain these facts?

(Same objection.)

A. It was.

Q. By the employees named?

(Same objection.)

A. By the employees named.

Q. Have you made any tracings or diagrams in your office fitting over and upon Exhibits 52 and 53, for the purpose of proving the facts that you have herein stated?

(The same objection.)

A. I have had a tracing made on a scale of four miles to the inch, fitted over Exhibits 52 and 53, illustrating and proving the facts stated.

Mr. Redding—Defendants offer in evidence a map prepared by the Engineering Department of the Southern Pacific Railroad Company showing the constructed line of the Southern Pacific Railroad through the Soledad Canyon, Los Angeles county, also the alleged surveyed line of the Atlantic & Pacific Railroad in that vicinity. The Southern Pacific Railroad line and stations are located in black thereon in reference to the lines of the public land surveys. The Atlantic & Pacific Railroad line is located in red, and is delineated on this map according to the map of Master's Exhibit 127 in Case 68, or Examiner's Exhibit No. 10 in the case at bar, and Defendants' Exhibit No. 54, and corresponds in scale to the "Defendants' Exhibits before the Special Examiner, Nos. 52 and 53;" and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 55."

(Same objection.)

(The map prepared by the Engineering Department of the Southern Pacific Railroad Company showing the constructed line of the Southern Pacific Railroad through the Soledad Canyon, Los Angeles county, also the alleged surveyed line of the Atlantic & Pacific Railroad in that vicinity, referred to by counsel in his offer is marked by the Special Examiner "Defendants' Exhibit before the Special Examiner, No. 55, Stephen Potter, Special Examiner.")

Mr. Redding—Q. Was this map marked "Defendants' Exhibit before the Special Examiner, No. 55," constructed in your Department from the Exhibits 52, 53 and 54, and from the surveys recently made under your supervision between these points as stated?

(Same objection).

A. Yes, sir.

Q. Does this Exhibit 55 correspond in scale to Exhibits 52 and 53?

(Same objection.)

A. It does.

Q. Do the township lines and ranges and section lines correspond on the same scale?

(Same objection.)

A. They do.

Q. Placing this Exhibit No. 55 over Exhibits 52 and 53 so that the townships and ranges and section lines on the first correspond with those on Exhibits 52 and 53, and so that the alleged line of location of the Atlantic & Pacific Railroad Company runs identical on both, and one over the other, will you please state whether or not said alleged line of location is shown

to pass over the earth's surface so that the stations and other landmarks that are marked on Exhibits 52, 53 and 54, appear on the same Exhibits 52, 53 and 54, as they actually exist on the surface of the earth, or whether or not there is a variance?

(Same objection.)

A. There is a variance.

Q. To what extent does the variance show, and in what particulars?

(Same objection.)

A. They are shown about five miles east, and about one mile south of their true position, as for instance, Soledad.

Q. State where Soledad is as indicated on the alleged maps of location and where it is on the earth's surface with reference to the section lines, townships and ranges of the public surveys?

(Same objection.)

A. Soledad on the alleged map of location of the Atlantic and Pacific Railroad is shown in Section No. 16, Township 4 North, Range 12 West, San Bernardino Base and Meridian.

Q. Where is it on the earth's surface?

(Same objection.)

A. Soledad on the earth's surface is situated in Section 10, Township 4 North, Range 13 West.

Q. Will you take the point known as Barrel Springs and describe what the evidence shows to be the variance between that locality, as indicated on the alleged line of location of the Atlantic and Pacific Railroad Company shown by Exhibits 52, 53 and 54, and where it exists on the earth's surface with reference to the public surveys?

(Same objection.)

A. Barrel Springs is shown on the alleged survey of the Atlantic and Pacific Railroad on Exhibits 52, 53 and 54, as situated in Section 21, Township 5 North, Range 11 West, San Bernardino Base and Meridian; Barrel Springs upon the surface of the earth is situated in Section 7, Township 5 North, Range 11 West, San Bernardino Base and Meridian.

Q. What is the variance between the location of Barrel Springs as shown upon the Atlantic & Pacific maps and as it really exists upon the earth's surface?

(Same objection.)

A. Barrel Springs is shown on the map of the Atlantic & Pacific survey, Exhibits 52, 53 and 54, as about two miles east and about two miles south of its proper location on the surface of the earth.

Q. Will you describe if there is any variation between the point known as the Summit, as delineated on the maps of the Atlantic & Pacific Railroad Company, Exhibits 52, 53 and 54, and the Summit as it is located on the earth's surface according to the public survey?

(Same objection.)

A. The Summit as shown on the maps of the alleged location of the Atlantic & Pacific Railroad, Exhibits 52, 53 and 54, is situated in Section 30, Township 5, North Range 11 West, San Bernardino Base and Meridian; the Summit on the earth's surface is situated in Section 22, Township 5, North Range 12 West, San Bernardino Base and Meridian.

Q. On Exhibit 54 there appears the line of the alleged surveyed route of the Atlantic & Pacific Rail-

road Company and also the Santa Clara River running parallel within a certain number of townships; will you state whether or not the Santa Clara River on the earth's surface does run parallel with the line of alleged surveyed route of the Atlantic & Pacific Railroad Company as it appears upon said map?

(Same objection.)

A. It does not run parallel to the line of the Atlantic and Pacific survey as shown on Exhibit 54.

Q. Does Exhibit No. 55 show correctly where the Santa Clara River does run on the earth's surface with reference to the townships, ranges and sections?

(Same objection.)

A. It does.

Q. Are the variations between the direction of the Santa Clara River on the earth's surface and direction of the alleged survey of the Atlantic & Pacific Railroad Company, as shown on Exhibits 52, 53 and 54, correctly delineated on this Exhibit 55?

(Same objection.)

A. They are correctly delineated on Exhibit 55.

(An adjournment was then taken by consent of counsel until Thursday, September 21st, 1893, at 10:30 A. M.)

San Francisco, September 21st, 1893.

Mr. Call—Mr. Redding, referring to our agreement to have the original of "Defendants' Exhibit before the Special Examiner, No. 2," substituted in lieu of the press copy, shall we have that examined by the Clerk or by the Standing Master, in order to make the proper substitution and comparison?

Mr. Redding—I suppose that inasmuch as the case has been referred to take testimony to the Standing Master, it had better be substituted by him, and he better certify to the substitution.

Mr. Call—He had better make a comparison?

Mr. Redding—Yes; he had better see that the exhibit we have been using here, No. 2, is really a trace or press copy over each sheet for sheet of the original, which is on file and attached to the answer, and when he finds that this is a press copy or a trace copy, or whatever designation you may wish to give to it, then substitute the original on file for the one we have been using, and make a note of the substitution and that it has taken place, in accordance with our stipulation in these proceedings.

Mr. Call—That is satisfactory.

DIRECT EXAMINATION OF WILLIAM HOOP.
(Resumed.)

Mr. Redding—Q. Have you taken that section of the alleged surveyed line of the Atlantic & Pacific Railroad Company, between the easterly line of Township 4 North, Range 17 West, and a point in Township 5 North, Range 11 West, San Bernardino Base and Meridian, and by moving it so that the easterly end would be at Barrel Springs, as Barrel Springs actually exists on the earth's surface, and have you sought to find out whether by so doing the delineation of this line of road would show a practicable route upon the surface of the earth?

Mr. Call—I will object to the question as incompetent, immaterial and irrelevant, and not the best evi-

dence; and upon the further ground that it is not competent to show by parole what judicial action has been taken by the Interior Department, nor whether they have received such map as a sufficient map of definite location or otherwise; and upon the further ground that the map and line of route of the Atlantic and Pacific Railroad between the points mentioned and across the State of California, having been finally accepted and approved by the Secretary of the Interior, such action is not open to question by third parties; and upon the further ground that such map and line of route of the Atlantic and Pacific Railroad Company having been accepted and approved by the Secretary of the Interior of the United States, acting judicially and in his discretion, is not subject to a collateral attack by these defendants, nor to question by the defendants, at all; and upon the further ground that the lands involved in suit in this case having been withdrawn for the benefit of the Atlantic and Pacific Railroad Company and reserved, were excepted out of the grant to the Southern Pacific Railroad Company made by the Act of Congress, of March 3, 1871, as shown by the terms and conditions of said grant; and upon the further ground that the question calls for the judgment and opinion of the witness upon a matter which has been conferred exclusively upon the Secretary of the Interior to determine; and upon the further ground that the exhibits referred to are not authentic maps showing the line of definite location of route by the Atlantic and Pacific Railroad; and the further objection that the validity of the location of the Atlantic and

Pacific Railroad Company from the Colorado River to Ventura has been adjudicated as a good and sufficient location of definite location by the Supreme Court of the United States and the United States Circuit Court for the Southern District of California, as shown by the records of those cases in evidence herein; and I desire to make the same objection to the evidence of this witness heretofore taken herein, and upon those grounds move to exclude such testimony from the record.

A. I have done so.

Q. With what results?

(Same objection.)

A. With the result that a wholly impracticable and essentially impossible route was shown.

Q. Have you had delineated on Defendant's Exhibit before the Special Examiner, No. 55, this shifted route?

(Same objection.)

A. I have done so.

Q. In what color does it appear?

A. In a dotted red line.

Q. Have you shifted the alleged surveyed line of the Atlantic and Pacific Railroad Company from the position it occupies on the Exhibits 52, 53 and 54, between those townships and ranges last named, so as to bring the point, Soledad, as it is shown on Exhibits 52, 53 and 54, over and upon Soledad as it exists actually on the surface of the earth, for the purpose of ascertaining whether or not, by so doing, a practicable route for a railroad is delineated?

(Same objection.)

A. I have done so.

Q. With what results?

(Same objection.)

A. With the results of showing a wholly impracticable and essentially impossible line of route.

Q. For the Atlantic and Pacific Railroad Company?

(Same objection.)

A. For the Atlantic and Pacific Railroad Company.

Q. Will you state how, if at all, this evidence is shown upon defendants' exhibit before the Special Examiner, No 55?

(Same objection.)

A. It is shown in a yellow dotted line.

Q. Will you state whether the alleged surveyed line of the Atlantic and Pacific Railroad between the points named, namely, Township 4 North, Range 17 West, as is delineated on said Exhibits 52, 53 and 54, and as is marked by a red line in Exhibit No. 55, proceeds at all across the earth's surface, having any reference whatever to elevations or depressions, mountain ranges, curves, angles or planes?

(Same objection.)

A. It does not so proceed.

Q. Will you state whether or not the alleged surveyed route of the Atlantic and Pacific Railroad between the points named, namely, Township 4 North, Range 17 West, and Township 5 North, Range 11 West, when shifted to Barrel Springs, as Barrel Springs actually exists on the earth's surface, and as said alleged surveyed route is indicated by the dotted red line on Ex-

hibit No. 55, proceeds at all across the surface of the earth having any reference whatever to elevations, or depressions, mountain ranges, curves, angles or planes?

(Same objection.)

A. It does not so proceed.

Q. Will you state whether or not the alleged surveyed route of the Atlantic and Pacific Railroad, between the points named, namely, Township 4 North, Range 17 West, and Township 5 North, Range 11 West, when shifted to Soledad so that Soledad upon Exhibits 52, 53 and 54 is placed over and upon Soledad as it actually exists on the earth's surface, and as said alleged surveyed route is indicated by the dotted line in yellow on Exhibit No. 55, proceeds at all across the surface of the earth, having any reference whatever to elevations or depressions, mountain ranges, curves, angles or planes?

(Same objection.)

A. It does not so proceed.

Q. Have you had prepared profile maps of this section of the State of California, for the purpose of showing over what ground, and in what manner, the line of the Atlantic and Pacific Railroad would have to pass in each, or any, or all, of these three positions between these points named?

(Same objection.)

A. I have had such profile maps prepared of a sufficient portion of the distance named to illustrate and confirm the previous statements.

Mr. Redding—Defendants offer in evidence a profile showing the line of the Southern Pacific Railroad

through Soledad Canyon as constructed, Los Angeles county, California, and also the alleged surveyed line of the Atlantic and Pacific Railroad in that vicinity, the profiles showing in colors, as follows: Black, profile of Southern Pacific Railroad; full red, profile of Atlantic and Pacific Railroad as filed on map, and as appears on Exhibits 52, 53 and 54; dotted red, profile of Atlantic and Pacific Railroad line, shifted northwest so as to bring Barrel Springs, as shown upon the Exhibits 52, 53 and 54, in conformity with Barrel Springs as it exists on the surface of the earth; dotted yellow line, being profile of the Atlantic and Pacific Railroad showing the line as indicated on Exhibits 52, 53 and 54, shifted westerly, so as to bring Soledad as indicated on said Exhibits in conjunction with Soledad, as in fact located on the earth's surface; and ask that this profile map of these several matters be marked "Defendants' Exhibit before the Special Examiner, No. 56."

(Same objection.)

(The profile showing the line of the Southern Pacific Railroad through Soledad Canyon as constructed, Los Angeles county, California, and also the alleged surveyed line of the Atlantic and Pacific Railroad in that vicinity referred to by counsel in his offer, is marked by the Special Examiner "Defendants' Exhibit before the Special Examiner, No. 56," Stephen Potter, Special Examiner.)

Q. This Exhibit 56 shows 5 different profiles; will you please state what the first or uppermost profile on this exhibit is?

(Same objection.)

A. The first or uppermost profile on Exhibit No. 56 is a profile of all the lines shown on Exhibit No. 55 and drawn to the same datum, namely, the sea level, and showing their relative positions.

Q. What do you mean by the word "profile?"

(Same objection.)

A. I mean a graphical representation or delineation of the earth's surface on a certain line or course or series of courses of a survey or alleged survey, as the case may be; it indicates the altitudes of certain points on such surveys or alleged surveys in reference to the level of the sea.

Q. What are the second, third, fourth and fifth profiles upon said Exhibit No. 56?

(Same objection.)

A. The second, third, fourth and fifth profiles are the same as the first profile on Exhibit No. 56, but with the profile of each railroad and alleged line of survey and shifting of said alleged line of survey, shown separately.

Q. Then what is the second one?

(Same objection.)

A. The second one is a profile of the Southern Pacific Railroad in Soledad Canyon as constructed, and being a profile of the track as it now exists.

Q. What is the third?

(Same objection.)

A. The third is a profile of the alleged survey of the Atlantic and Pacific Railroad, as shown on Exhibits 52, 53 and 54.

Q. What is the fourth?

(Same objection.)

A. The fourth is a profile of the alleged survey of the Atlantic and Pacific Railroad, as shown on Exhibit No. 55, as shifted to bring Barrel Springs as shown on Exhibits 52, 53 and 54 in conformity with Barrel Springs as it exists on the earth's surface.

Q. What is the fifth profile?

(Same objection.)

A. The fifth profile of the alleged survey of the Atlantic and Pacific Railroad as shown on Exhibits 52, 53 and 54 and shifted as shown on Exhibit No. 55, to bring Soledad as indicated on the alleged survey of the Atlantic and Pacific Railroad in conjunction with Soledad as it exists on the earth's surface.

Q. State how the first profile on Exhibit 56 was made, what materials used, what service and what implements?

(Same objection.)

A. The first profile on Exhibit No. 56 was made as follows:—First, the profile line shown in full black was made from the notes and profiles in my office of the Southern Pacific Railroad Company, as constructed; the full red line on the profile referred to on the first profile, Exhibit No. 56, was constructed from data obtained in the following manner: the alleged line of survey of the Atlantic and Pacific Railroad as shown on Exhibits 52, 53 and 54 is shown in reference to the lines of the Government surveys; this position in reference to the Government surveys was identified upon the ground at the crossing of each north and south Section line and the line of alleged survey of the Atlantic and Pacific Railroad; the line of levels were then run in the manner usual amongst

engineers with a leveling instrument and level rod from bench marks of known elevation along the constructed line of the Southern Pacific Railroad to such identified points, and the elevation thereof in this manner accurately determined within the usual limits of error of engineering work; this process was applied in detail in obtaining the data for also the dotted red and the dotted yellow lines, shown on the profile herein referred to.

Q. Taking the third profile on Exhibit No. 56, what elevation do you find from the sea level that Soledad thereon appears?

(Same objection.)

A. About 3500 feet above the level of the sea.

Q. Is this Soledad named on the 3rd profile of Exhibit 56, the Soledad named on Exhibit 54, as delineated on the alleged surveyed line of the Atlantic and Pacific Railroad at that point?

(Same objection.)

A. It is.

Q. What is the place Soledad, marked on Exhibit 54?

(Same objection.)

A. Soledad is the name of a small cluster of houses which existed in 1871 and 1872, and to a certain extent at the present time, some of the buildings still existing and still occupied, and at that time in 1871 and 1872 occupied in the following manner: the largest building of them, which was an adobe building, was occupied by an American family, to the best of my remembrance, who kept, I think, a postoffice, and, I know, an hotel, for the accommodation of occasional travelers; the re-

maining houses were, so far as I remember, occupied by Mexicans, so-called—native Californians; the place was, in 1871 and 1872, and before that time and since that time, well known by the name of Soledad to all local residents and some others.

Q. Having defined what Soledad is, will you state what the elevation of Soledad is, as it appears on Exhibits 52, 53 and 54 on the alleged line of survey of the Atlantic and Pacific Railroad as delineated on said exhibits?

(Same objection.)

A. In round numbers, 3,500 feet above the sea level.

Q. And in what township, range and section does Soledad appear as delineated on said Exhibits 52, 53 and 54, of the alleged surveyed line of the Atlantic and Pacific Railroad?

(Same objection.)

A. In Section No. 16, Township 4 North, Range 12 West, San Bernardino Base and Meridian.

Q. Where does Soledad actually exist on the surface of the earth with reference to the public surveys of the United States?

(Same objection.)

A. In Section 10, Township 4 North, Range 13 West, San Bernardino Base and Meridian.

Q. What elevation above the sea have you ascertained Soledad to be upon the earth's surface?

(Same objection.)

A. About in round numbers 2,440 feet above the sea level.

Q. What have you ascertained the fact to be with reference to the difference in altitude above the sea

level between Soledad in round numbers, as delineated upon the alleged line of location shown upon Exhibits 52, 53 and 54, and as it exists on the surface of the earth?

(Same objection.)

A. In round numbers 1,060 feet.

Q. Will you please state by what means you ascertained the elevation of Soledad above the level of the sea, as it actually exists on the surface of the earth?

(Same objection.)

A. By means of the common methods, known as lines of levels run by level instruments and rods as used in the survey and construction of railroad lines.

Q. Will you give the names of some of the instruments used in this particular instance under your supervision?

(Same objection.)

A. The level instrument would be known as an engineer's "Y" level.

Q. Was such an instrument used in this instance?

(Same objection.)

A. It was.

Q. What other instruments were used?

(Same objection.)

A. What is known as an engineer's level rod.

Q. Was such an instrument used in this instance?

(Same objection.)

A. It was.

Q. What other instruments?

(Same objection.)

A. No other instruments for obtaining elevations.

Q. Are those the instruments used by engineers for ascertaining these results in the building of rail-

roads throughout this country, and in ascertaining the elevations above the sea level of points of the earth's surface?

(Same objection.)

A. They are so used universally, so far as I know of, in obtaining elevations used in the survey and construction of railroads, or any other elevations which are desired to be obtained with great accuracy.

Q. Did you use the same methods, instruments and means in ascertaining the elevations of the earth's surface along the constructed road of the Southern Pacific Railroad Company through this locality?

(Same objection.)

A. I did.

Q. Referring to the third profile on Exhibit 56, at what height above the sea level is the alleged surveyed line of the Atlantic and Pacific shown to be in Township 4 North, Range 14 West, Section 14?

(Same objection.)

A. In round numbers, 3760 feet above the sea level.

Q. At what elevation is the alleged surveyed line of the Atlantic and Pacific, as indicated on Exhibits 52, 53 and 54, where it crosses between Sections 15 and 16, and profiled on the 3 profile of Exhibit 56?

(Same objection.)

A. In round numbers the elevation is 2110 feet.

Q. What is the distance as shown on Exhibits 52, 53 and 54, and thereon delineated, of the alleged line of survey, of the Atlantic and Pacific Railroad between those points named independent of the elevation above the sea?

(Same objection.)

A. About 1½ miles.

Q. What is the difference in elevation above the sea between those two points as delineated on Exhibits 52, 53 and 54, showing the alleged surveyed line of the Atlantic and Pacific Railroad and profiled in Number 3 profile, of Exhibit 56?

(Same objection.)

A. In round numbers 1650 feet.

Q. Then what would the grade be per mile between those two points?

(Same objection.)

A. 1320 feet per mile in round numbers.

Q. Is such a grade practicable or feasible for the construction of a railroad?

(Same objection.)

A. Not practicable or feasible for the construction of any ordinary railroad which depends on the adhesion of steam locomotives to the rails for its tractive power.

Q. State whether or not it is wholly impracticable or not for such a railroad?

(Same objection.)

A. It is wholly impracticable for a railroad of the class that I have mentioned.

Q. For what kind of a railroad would it be a practicable grade?

(Same objection.)

A. It would be a practicable grade for a railroad which used a stationary engine to haul its cars by means of a wire or other rope attached to them, or possibly for a railroad built with cogged rails and

cogged driving wheels for the locomotives, after the manner of the railroads sometimes constructed to the tops of high mountains in Switzerland.

Q. What is the angle of degree?

A. (Same objection.)

A. It would be a 25 per cent. grade; that is, it would rise 25 feet vertically to 100 feet horizontally, or it would rise one foot vertically to 4 feet horizontally; it would be, as I remember it, a little steeper than the steepest existing street grade on California street, in San Francisco, from Kearny street, up to the top of the hill.

Mr. Call—Q. How would it compare with Clay and Washington streets?

A. I do not have their grades in my mind.

Mr. Redding—Q. What is the steepest grade practicable for a standard gauge railroad, that is to say, for a railroad of the gauge provided for in the Act of Congress creating the Atlantic and Pacific Railroad Company?

(Same objection.)

A. It is difficult to say absolutely, what is the steepest practicable grade; I can give some instances of existing operated grades which are considered by the owners of the roads on which they occur to be as steep or steeper than they are desired for economic operation; as, for instance, on the lines of railroad leased by the Southern Pacific Company, a corporation, there are grades of 174 feet in round numbers to the mile on the road across the Siskiyou mountains between Hornbrook and Ashland; there are grades on the Atchison, Topeka and Santa Fe system of railroad of

185 feet to the mile in round numbers over the Raton Pass; there are grades on the same system of railroad over the pass known as the Glorieta pass of 174 feet to the mile; there are grades very slightly steeper than this on the Denver and Rio Grande Western Railroad which were originally built narrow gauge, and which, I think, have been since rebuilt to broad gauge, and which grades, I think are as high as 211 feet to the mile, or possibly steeper; I have never known of any steeper grades than these being operated by steam railroads which depended for their tractive power on locomotives which depended for their power on adhesion to the rail.

Q. Referring again to Exhibits 52, 53 and 54, whereon is delineated the alleged surveyed line of the Atlantic and Pacific Railroad, between Township 4 North, Range 17 West, and Township 5 North, Range 11 West, and referring to this alleged surveyed line as profiled on the 3rd profile of Exhibit 56, please state what is the elevation above the earth's surface of said line in Section 21, 4 North, 14 West, San Bernardino Base and Meridian?

(Same objection.)

A. In round numbers 3,500 feet.

Q. What is the distance from the north and south line between Sections 15 and 16, in Township 4 North, Range 14 West, and said Section 21, in said township and range, as indicated on said line of survey of the A. & P. Co., independent of the elevation above the sea?

(Same objection.)

A. About 6-10ths of a mile.

Q. What is the difference of elevation above the sea level between those two points?

(Same objection.)

A. About 1,390 feet.

Q. Then the line of the Atlantic and Pacific Railroad Company between those two points makes what grade?

(Same objection.)

A. A grade of about 2,317 feet to the mile.

Q. Is such a grade practicable or not?

(Same objection.)

A. It is not for any ordinary steam railroad as heretofore described.

An adjournment was then taken by consent of counsel until Friday, September 22nd, 1893, at 10:30 A. M.

San Francisco, September 22, 1893.

Mr. Redding—Mr. Call, I desire to have certified copies made of Exhibits 52 and 53, and when certified by the Examiner, substitute them for the originals now introduced and now being used, if that will be satisfactory. This is in conformity to what we have been doing in the case of other exhibits.

Mr. Call—I have no objection to the Special Examiner making certified copies of the exhibits to stand in lieu of those before offered, subject to the same objections which have been made to the original exhibits.

(The witness, Jerome Madden, was at this point recalled for further cross-examination upon the production by him of certain lists which had been heretofore asked for. His testimony given this day has been

placed in this record immediately following his testimony heretofore given, for convenience in signing same.)

DIRECT EXAMINATION OF WILLIAM HOOD.

(Resumed.)

Mr. Redding—Q. Referring again to Exhibits 52, 53 and 54, whereon is delineated the alleged surveyed line of the Atlantic & Pacific Railroad Company between Township 4 North, Range 17 West, and Township 5 North, Range 11 West, and referring to this alleged surveyed line as profiled on the third profile of Exhibit 56, please state what is the elevation above the earth's surface of said line in Section 21, Township 4 North, Range 14 West?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence; and upon the further ground that it is not competent to show by parol what judicial action has been taken by the Interior Department, nor whether they have received such map as a sufficient map of definite location or otherwise; and upon the further ground that the map and line of route of the Atlantic and Pacific Railroad between the points mentioned and across the State of California, having been finally accepted and approved by the Secretary of the Interior, such action is not open to question by third parties; and upon the further ground that such map and line of route of the Atlantic and Pacific Railroad Company having been accepted and approved by the Secretary of the Interior of the United States, acting judicially and in his discretion, is not subject to a collateral attack by these defendants, nor to question by these defendants at all;

and upon the further ground that the lands involved in suit in this case having been withdrawn for the benefit of the Atlantic and Pacific Railroad Company and reserved, were excepted out of the grant to the Southern Pacific Railroad Company made by the Act of Congress of March 3, 1871, as shown by the terms and conditions of said grant; and upon the further ground that the question calls for the judgment and opinion of the witness upon a matter which has been conferred exclusively upon the Secretary of the Interior to determine; and upon the further ground that the exhibits referred to are not authentic maps showing the line of definite location of the Atlantic and Pacific Railroad; and the further objection that the validity of the location of route by the Atlantic & Pacific Railroad Company from the Colorado River to Ventura has been adjudicated as a good and sufficient location of definite location by the Supreme Court of the United States and the United States Circuit Court for the Southern District of California, as shown by the records of those cases in evidence herein).

A. In round numbers, 3500 feet above the sea level.

Q. What is the lineal distance from that point to the north and south line between Sections 20 and 21 of the same township and range, independent of elevation above the sea?

(Same objection.)

A. About in round numbers, four-tenths of a mile.

Q. What is the elevation above the sea of the last point named?

(Same objection.)

A. In round numbers, 2720 above the sea level.

Q. Then, in going from the point named in Section 21 to the last point named, a distance of four-tenths of a mile, what descent would be made by a railroad train?

(Same objection.)

A. 880 feet vertical.

Q. What would be the angle of depression or elevation between those two points?

(Same objection.)

A. It would be at the rate of 2200 feet to the mile.

Q. Taking the point in Section 21, Township 4 North, Range 14 West, which is at the height above the sea of 3500 feet, as indicated on Exhibits 52, 53 and 54, and profiled on the third profile of Exhibit 56, what is the lineal distance independent of sea elevation therefrom to the point where the alleged survey of the Atlantic & Pacific Railroad, as shown on Exhibits 52, 53, 54 and 55, and profiled on the third profile of Exhibit 56, crosses the north and south township line between Township 4 North, Ranges 14 and 15 West, San Bernardino Base and Meridian.

(Same objection.)

A. About two and a-half miles, horizontal distance.

Q. What is the elevation above the sea of the last point named, namely, where the alleged line of location of the A. & P. crosses the north and south township line of Township 4 North, Ranges 14 and 15 West, San Bernardino Base and Meridian.

(Same objection).

A. It is in round numbers 1630 feet above the sea level.

Q. Then in constructing a road between those two points upon this alleged survey, what would be the average grade per mile?

(Same objection.)

A. The total difference of elevation would be in round numbers 1870 feet, and the average grade per mile would be 748 feet.

Q. Do you believe that the alleged line of location of the Atlantic & Pacific Railroad Company between the points concerning which you have been testifying, namely, the easterly line, Township 4 North, Range 17 West, and a point in Township 5 North, Range 11 West, San Bernardino Base and Meridian, and as indicated on Exhibits 52, 53 and 54 (or with reference to 54, Examiner's Exhibit No. 10 in the case at bar, and Master's Exhibit 127 in Case 68), is predicated, bounded, made or drawn from any survey of the earth's surface, and of the territory embraced between those points, by any engineers or surveying parties, or any persons whatever.

Mr. Call—Which line do you refer to?

Mr. Redding—I am referring to the line of the Atlantic & Pacific Railroad Company, as indicated on Exhibit 54, which is a certified copy of the map filed by the Atlantic & Pacific Railroad Company in the Interior Department, and which exhibit has been enlarged by a scale of six inches, so as to appear identically thereon with Exhibits 52 and 53, Exhibit 54 being also known in this case as Examiner's Exhibit No. 10, or by substitution, Master's Exhibit 127, in Case 68.

Mr. Call—You assume that the line of definite location, as shown by Examiner's Exhibit No. 10, on file in this case, has been correctly delineated upon the other exhibits?

Mr. Redding—Exhibit Master's Exhibit No. 10 is, I understand, offered by you as an exemplified copy of that portion of the alleged line of location of the Atlantic and Pacific Railroad that runs through this territory.

Mr. Call—Yes, that is what I believe it to be.

Mr. Redding—And I also understand that this Master's Exhibit No. 10 is taken by you from out the record of Case 68, and was known in the record of Case 68 as Master's Exhibit 127.

Mr. Call—I do not recollect the exhibit number in that case.

Mr. Redding—Well, it was taken as an exhibit from that case.

Mr. Call—Yes, that is my recollection.

Mr. Redding—Now, we have introduced Exhibit 54 as being another certified copy of the same portion of the alleged line of surveyed location between the same point of the Atlantic and Pacific Railroad Company. You have objected to the Exhibit 54 on the ground that the certificate does not contain a true statement of what the Interior Department considered the map to be. We have introduced the Exhibit 54 as being an exact production of your Exhibit No. 10, and we have placed Exhibit No. 54 over and upon the Master's Exhibit 127 in Case 68, and have ascertained that it is exactly the same thing, line for line, township for township, range for range, and topography in every way the same.

Mr. Call—Then, I say, you assume that you have correctly delineated the line of location of the Atlantic & Pacific Railroad on these other exhibits you are calling attention to?

Mr. Redding—I submit we have proven it.

Mr. Call—Then, I say, you assume that you have proven that.

Mr. Redding—Yes, sir; and also the Exhibits 52 and 53, which we have introduced, are certified by the Interior Department as being exemplified copies of the Atlantic and Pacific alleged line of location in the territory named, only on a larger scale of four miles per inch, instead of six miles per inch.

Mr. Call—The certificate does not state so, and it is not so certified, and the maps are not purporting to be maps of location of route at all. I inquire for information upon what assumption you predicate the question.

Mr. Redding—Of course, the Court will be the judge of the sufficiency of the proof.

(The same objection.)

A. I do not.

Q. Do you know whether it would be practicable for a survey to be made, as indicated in the last question, between the points named, by a party of engineers, or any person whatever, and upon which a railroad line could be constructed and operated?

(Same objection.)

A. It would not be a practicable route for the construction and operation of a railroad.

Q. Did you take part in the survey and construction of the Southern Pacific Railroad between the points named?

(Same objection.)

A. I did.

Q. Are you familiar with the territory over which the Southern Pacific Railroad Company now has its completed road and is operating the same?

(Same objection.)

A. Yes, sir.

Mr. Redding—Mr. Call, you stated you did not remember the number of the exhibit in Case 68 as being your Exhibit No. 10 in this case. I will recall you to Volume 1, of the testimony taken before the Examiner in Los Angeles in this Case 184, and on page 8 occurs the following statement by yourself: "Complainant offers in evidence a copy of map certified under seal of the Commissioner of the General Land Office, of the Atlantic & Pacific Railroad, from a point on the western boundary of Los Angeles County, California, to a point in Township 7 North, Range 7 East, S. B. M., the same being marked Master's Exhibit 127 in said Case 68, and now marked Examiner's Exhibit No. 10, to which the respondents made the same objection." You have asked what proof we have given of the fact that Exhibit 54, which we have offered as a certified copy of this same map from the Interior Department, is a counterpart of your Exhibit No. 10, and in reply I will call your attention to the proof that Mr. Hood made yesterday, by taking this Master's Exhibit 127 in Case 68, which exists in the official record of this Case 68?

Mr. Call—You mean a copy of the printed record?

Mr. Redding—A copy of the printed record printed by the Government, with which I have been served,

and which is here now before the Special Examiner, and taking this Master's Exhibit 127 therein, and laying it out on the table and placing Exhibit 54 over it, the one is shown to be an exact copy of the other.

Q. Is not that so, Mr. Hood?

(Same objection.)

A. It is.

Q. And do the lines of the two maps correspond exactly?

(Same objection.)

A. They do.

Q. In every particular?

(Same objection.)

A. In every particular.

Q. I believe you stated that you were familiar with the country between the points and across the territory concerning which you have been testifying, namely: 4 North, 17 West, and 5 North, 11 West, S. B. M.?

(Same objection.)

A. I have.

Q. Do you know whether or not the elevations above the earth's surface, as indicated on Exhibits 52, 53 and 54, and upon the profile maps made therefrom, do in fact exist?

(Same objection.)

A. They do.

Q. Have you seen these elevations and depressions?

(Same objection.)

A. I have.

Q. Have you seen the mountains and valleys thereon indicated?

(Same objection.)

A. I have.

Q. With your own eyes?

(Same objection.)

A. With my own eyes.

Mr. Redding—The defendants offer in evidence a certified copy of a map on file in the Interior Department showing the limits of the withdrawal of the Atlantic & Pacific Railroad Company from Township 7 North, Range 7 East, S. B. M., to the Colorado River, and ask that it be marked “Defendants’ Exhibit before the Special Examiner, No. 57.”

(Same objection.)

(Certified copy of a map on file in the Interior Department showing the limits of the withdrawal of the Atlantic & Pacific Railroad Company from Township 7 North, Range 7 East, S. B. M., to the Colorado River, is marked by the Special Examiner “Defendant’s Exhibit before the Special Examiner, No. 57, Stephen Potter, Special Examiner.”)

Q. To what scale of miles per inch is this last exhibit drawn?

(Same objection.)

A. Four miles per inch.

Mr. Redding—Defendants next offer in evidence, an exemplified copy from the Interior Department, of a map of the route of the Atlantic & Pacific Railroad Company through part of San Bernardino county, and to the eastern bank of the Colorado River, and ask that it be marked “Defendants’ Exhibit before the Special Examiner, No. 58.”

(Same objection.)

(Exemplified copy, from the Interior Department, of a map of the route of the Atlantic & Pacific Railroad Company through a part of San Bernardino county and to the eastern bank of the Colorado River, is marked by the Special Examiner "Defendants' Exhibit before the Special Examiner, No. 58, Stephen Potter, Special Examiner.")

Q. Have you examined these Exhibits 57 and 58 to ascertain whether or not the delineation of the alleged surveyed route of the Atlantic & Pacific Railroad Company, as it appears on Exhibit 58, proceeds in the same manner on Exhibit 57, topographically, with the exception of the difference in the scale?

(Same objection.)

A. I have.

Q. What have you found as the result?

(Same objection.)

A. I find the two exhibits are essentially identical in the particulars mentioned.

Q. Do you know whether or not the line of route of the Atlantic & Pacific Railroad Company, as indicated on Exhibit 58, proceeds in the same direction across the State of California with reference to the townships, ranges and sections as thereon indicated as it does in Exhibit 57?

(Same objection.)

A. I know that it does.

Q. Are you familiar with the topography of the country between the points named on these Exhibits 57 and 58?

(Same objection.)

A. I am.

Q. Do you know the location of the elevations and depressions, mountain ranges and valleys, with reference to the sections, townships and ranges within said territory?

(Same objection.)

A. I do.

Q. Turning to that portion of the alleged surveyed line of route of the Atlantic & Pacific Railroad Company, as shown on these two exhibits, and as they appear on both exhibits, from a point in Township 7 North, Range 7 East, San Bernardino Base and Meridian, thence easterly to the Colorado River, will you state if you know whether this line of route proceeds across the surface of the earth, taking into consideration at all elevations and depressions of the earth's surface between said points, and will you specify in detail between different points embraced in said territory in your answer?

(Same objection.)

A. In general the line of the alleged survey of the Atlantic & Pacific Railroad between the points named in the question, does not proceed over practicable ground for railroad construction, although it does so proceed at certain points; for instance, the alleged survey in Townships 7 North, Range 7 East, 7 North, 8 East, and a portion of the distance in 7 North, 9 East, all of San Bernardino Base and Meridian—

Mr. Call—Q. (interrupting) What maps are you referring to?

A. Defendants' Exhibits before the Special Examiner, Nos. 57 and 58.

The Witness (continuing to answer)—Proceeds over the top of and upon the slopes of a range of mountains

of considerable height, in a situation where there is every reason to believe that no engineer of sound mind would ever have surveyed a railroad route; in the remaining portion of Township 7 North, Range 9 East, San Bernardino Base and Meridian, and thence along the line of alleged survey of the Atlantic & Pacific Railroad, as shown on Exhibits 57 and 58, herein referred to, to the Colorado River, this alleged survey occupies ground upon which it would be possible to build a railroad, and in a certain sense practicable, but the ground referred to is of such a character and of such elevations above the proper available ground in that district that it is unlikely that a survey was ever made as delineated on Exhibits 57 and 58, herein referred to.

Q. How familiar are you with the territory of the earth's surface between 7 North, 7 East, San Bernardino Base and Meridian, and thence easterly to the Colorado River.

(Same objection.)

A. I have spent about five months continuously in this territory, and have driven and walked over it and ridden over it extensively, and have had occasion to identify the position of the Government section corners with reference to the topographical features, and, in general, am as thoroughly familiar with the country as is possible to become in that length of time with continuous inspection of it and living in it.

Q. Will you state what you know to be the fact with reference to the existence of elevations and depressions in 7 North, 7 East, 7 North, 8 East, 7 North, 9 East, S. B. M.?

(Same objection.)

A. There are mountains rising to a height of one to two thousand feet above the general level of the smoother country at their bases, and these mountains are partially made up of sandstone ranges, with occasional volcanic eruptive ranges, such as trap dykes, volcanic covered buttes, and so forth.

Q. Does the alleged surveyed line of the Atlantic & Pacific Railroad Company, as indicated on Exhibits 57 and 58, proceed having any reference or taking into consideration these mountain elevations and depressions?

(Same objection.)

A. It does not, and in particular in the townships as mentioned, namely, Township 7 North, Range 7 East, Township 7 North, Range 8 East, and part of Township 7 North, Range 9 East.

Q. As a civil engineer, and an expert in these matters, what further assurance have you, if any, that the line of alleged surveyed route, as indicated on Exhibits 52, 53, 54, 57 and 58, were not drawn from surveys made across the territory embraced on said maps?

(Same objection.)

A. In general, I may say, that the line of alleged survey as delineated on Exhibits 52, 53, 54, 57 and 58, before the Special Examiner, often passes over ground which is of a mountainous character, and wholly impracticable for the construction of railroads, in the face of the fact that not many miles distant are situated tracts of suitable ground for the construction of a railroad, and where the line of alleged survey

does pass over ground on which it would be possible to build a railroad, it is where the size of the open plains and sloping plains is such, that any line drawn on any map would be a possible and reasonably practicable route; in other words, the line of alleged survey on these maps seems to entirely ignore all formidable topographical features, and it is impossible that any engineer of any degree of competency would ever have made the survey as shown on these Exhibits, 52, 53, 54, 57 and 58, at certain parts or points thereof, and for certain distances thereon.

(A recess was then taken by consent of counsel until two P. M.)

San Francisco, September 22, 1883, 2 p. m.

DIRECT EXAMINATION OF WILLIAM HOOD.

(Resumed.)

Mr. Redding—Q. In ascertaining where Soledad, Barrel Springs, and other points upon which you have testified, actually exist on the surface of the earth, will you state what physical means you and your surveyors took to locate these several places?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence; and upon the further ground that it is not competent to show by parole what judicial action has been taken by the Interior Department, nor whether they have received such map as a sufficient map of definite location or otherwise; and upon the further ground that the map and line of route of the Atlantic & Pacific Railroad between the points mentioned and across

the State of California having been finally accepted and approved by the Secretary of the Interior, such action is not open to question by third parties; and upon the further ground that such map and line of route of the Atlantic and Pacific Railroad Company having been accepted and approved by the Secretary of the Interior of the United States, acting judicially and in his discretion, it is not subject to a collateral attack by these defendants, nor to question by these defendants, at all; and upon the further ground that the lands involved in suit in this case having been withdrawn for the benefit of the Atlantic & Pacific Railroad Company and reserved, were excepted out of the grant to the Southern Pacific Railroad Company made by the Act of Congress of March 3, 1871, as shown by the terms and conditions of said grant; and upon the further ground that the question calls for the judgment and opinion of the witness upon a matter which has been conferred exclusively upon the Secretary of the Interior to determine; and upon the further ground that the exhibits referred to are not authentic maps showing the line of definite location of the Atlantic & Pacific Railroad; and the further objection that the validity of location of route by the Atlantic & Pacific Railroad Company from the Colorado River to Ventura has been adjudicated as a good and sufficient location of definite location by the Supreme Court of the United States and the United States Circuit Court for the Southern District of California, as shown by the records of those cases in evidence herein.)

A. The constructed line of the Southern Pacific Railroad in Soledad Canyon was connected, when the

road was originally constructed, on such section corners as existed at that time of Government land subdivisions and sections which had at that time been sectionized and surveyed, and since then the line of the Southern Pacific Railroad has been connected on further and other section corners which have been established by more recent Government surveys, and the relation of the Southern Pacific Railroad as constructed is known to those section lines, the location of Barrel Springs has been determined in reference to the constructed line of the Southern Pacific Railroad, and the Government section corners by an actual lineal survey, with the usual instruments employed in such surveys, from the constructed line of the Southern Pacific Railroad and its allied section corner connections to Barrel Springs; the same method of ascertaining the position of other points referred to in the question on the surface of the earth in relation to the constructed line of the Southern Pacific Railroad and the United States Government land survey section corners has been followed.

Q. Do you know as a fact whether or not sufficient evidence on the earth's surface of Government surveys were found so as to run out the lines from the monuments and thus ascertain exactly where these points are located with reference to sections and township ranges?

(Same objection.)

A. There were a sufficient number found; they were not all found, but there were a sufficient number found to in many cases identify these points positively from the Government section corner monuments, and in

other cases the principal distances were measured to such points from the nearest existing known points and monuments.

Mr. Redding—The defendants offer in evidence an exemplified copy from the Department of the Interior, General Land Office, Washington, D. C., of the map and profile of that section of the constructed line of the Southern Pacific Railroad Company, from a point in Section 3, Township 2 North, Range 15 West, S. B. M.; thence in a northerly direction to a point in Section 17, Township 11 North, Range 12 West, S. B. M. This map shows the constructed line of the Southern Pacific Railroad Company under the Act of March 3, 1871, from Mojave to San Fernando, through San Fernando Tunnel, and includes the Soledad Cañon, and the territory concerning which the witness has been testifying this morning; and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 59."

(Same objection.)

(The exemplified copy from the Department of the Interior, General Land Office, Washington, D. C., of the map and profile of that section of the constructed line of the Southern Pacific Railroad Company, from a point in Section 3, Township 2 North, Range 15 West, S. B. M.; thence in a northerly direction to a point in Section 17, Township 11 North, Range 12 West, S. B. M., showing the constructed line of the Southern Pacific Railroad Company under the Act of March 3, 1871, from Mojave to San Fernando, through San Fernando Tunnel, referred to by counsel in his offer, is marked by the Special Examiner, "Defend-

ants' Exhibit before the Special Examiner, No. 59, Stephen Potter, Special Examiner.")

Mr. Redding—The defendants next offer in evidence exemplified copy of a map from the Department of the Interior, General Land Office, Washington, D. C., showing the constructed line of the Southern Pacific Railroad Company, from San Fernando, thus joining onto the map last introduced, to Spadra, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 60."

(Same objection.)

(Exemplified copy of map, from the Department of the Interior, General Land Office, Washington, D. C., showing the constructed line of the Southern Pacific Railroad Company from San Fernando to Spadra, is marked by the Special Examiner "Defendants' Exhibit before the Special Examiner, No. 60, Stephen Potter, Special Examiner.")

Mr. Redding—Defendants next offer in evidence exemplified copy of a map, from the Department of the Interior, General Land Office, Washington, D. C., of the constructed line of the Southern Pacific Railroad from Spadra to San Gorgonio Summit, in Section No. 4, Township 3 South, Range 1 West, San Bernardino Base and Meridian; and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 61."

(Same objection.)

(Exemplified copy of a map, from the Department of the Interior, General Land Office, Washington, D. C., of the constructed line of the Southern Pacific Railroad from Spadra to San Gorgonio Summit, in Section

No. 4, Township 3 South, Range 1 West, San Bernardino Base and Meridian, is marked by the Special Examiner "Defendants' Exhibit before the Special Examiner, No. 61, Stephen Potter, Special Examiner.")

Mr. Redding—Defendants next offer in evidence an exemplified copy of a map, from the Department of the Interior, General Land Office, Washington, D. C., showing the constructed line of road of the Southern Pacific Railroad Company, from the point last named, namely, San Gorgonio Summit, in Section No. 4, Township 3 South, Range 1 West, San Bernardino Base and Meridian, to Indian Wells, then so-called, now called Indio, in San Diego county, Section No. 24, Township 5 South, Range 7 East, San Bernardino Base and Meridian, and ask that it be marked Defendants' Exhibit before the Special Examiner, No. 62.

(Same objection.)

(Exemplified copy of a map, from the Department of the Interior, General Land Office, Washington, D. C., showing the constructed line of road of the Southern Pacific Railroad Company from San Gorgonio Summit in Section 4, Township 3 South, Range 1 West, San Bernardino Base and Meridian, to Indian Wells, then so-called, now called Indio, in San Diego county, Section 24, Township 5 South, Range 7 East, San Bernardino Base and Meridian, is marked by the Special Examiner "Defendants' Exhibit before the Special Examiner, No. 62, Stephen Potter, Special Examiner.")

Mr. Redding—Defendants next offer in evidence exemplified copy of a map, from the Department of the Interior, General Land Office, Washington, D. C., showing the constructed line of road of the Southern Pacific

Railroad Company from the point last named, namely, Indian Wells, then so-called, now called Indio, in San Diego county, Section 24, Township 5 South, Range 7 East, San Bernardino Base and Meridian, to Fort Yuma, on the Colorado river, and ask that it be marked Defendants' Exhibit before the Special Examiner, No. 63.

(Same objection.)

(Exemplified copy of a map, from the Department of the Interior, General Land Office, Washington, D. C., showing the constructed line of road of the Southern Pacific Railroad Company from Indian Wells, then so-called, now called Indio, in San Diego county, Section 24, Township 5 South, Range 7 East, San Bernardino Base and Meridian, to Fort Yuma, on the Colorado River, is marked by the Special Examiner "Defendants' Exhibit before the Special Examiner, No. 63, Stephen Potter, Special Examiner.")

Mr. Redding—Q. Where does this last map end on its easterly boundary?

(Same objection.)

A. The last map of the Southern Pacific Railroad of California ends at the boundary line between the State of California and the Territory of Arizona, at a point near Fort Yuma, on the Colorado River.

Q. Now, taking these Exhibits, Nos. 59, 60, 61, 62, and 63, will you state whether or not they show a constructed line of railroad from Mojave to Fort Yuma?

(Same objection.)

A. They do.

Q. Continuous and connecting?

(Same objection.)

A. They do.

Q. Turning to Exhibit 59, will you please state whether this map includes on its face the territory known as Soledad Cañon?

(Same objection.)

A. It does.

Q. Does it include the territory embraced between Township 4 North, Range 17 West, and Township 5 North, Range 11 West, all of San Bernardino Base and Meridian?

(Same objection.)

A. It includes a portion of that district only.

Q. What portion?

(Same objection.)

A. It includes the portion between a point in Township 4 North, Range 16 West, San Bernardino Base and Meridian, and a point in Township 5 North, Range 12 West, San Bernardino Base and Meridian.

Q. Were you in the employ of the Southern Pacific Railroad Company, one of the defendants in this action, when the surveys indicated on Exhibit 59 were made and the road being constructed?

A. I was.

Q. Did you take part in the labor which resulted in the location and construction of the road, as evidenced by this map? A. I did.

Q. This Exhibit 59 has upon its face, and at the bottom of it, proceeding left to right, certain flags and statements connected therewith, and marks in red ink, as follows: "Located December 3, 1871;" in what township and range, indicated on said map, are the corre-

sponding flags along the line of said road, corresponding to the words "Located December 3, 1871"?

A. The corresponding flags are respectively in Section No. 17, Township 11 North, Range 12 West, and Section 4, Township 10 North, Range 12 West, both of San Bernardino Base and Meridian.

Q. Did you take part in the survey of this road at this time, and upon which these flags were placed, and from which the delineation appears on this map?

A. I did, in the sense that at this particular point I was assistant chief engineer, and, in fact, on that particular day was not upon the ground, though often upon the ground.

Q. Were you upon the ground at any time during the location and construction of this road as shown upon this Exhibit 59.

A. I was upon the ground most of the time in the location and construction of this line of road as exhibited on Exhibit No. 59?

Q. Do you know whether or not there were surveying parties of the defendant in the act of surveying along this territory indicated upon this map, and on the dates written in red upon this map, namely, Exhibit 59? A. There were.

Q. Proceeding on this map to the right from Mojave, will you state when it was the surveyed location of the road was made in Section 4, Township 9 North, Range 12 West, S. B. M.?

(Question objected to by Mr. Call as irrelevant, immaterial and incompetent, and not the best evidence; and upon the further ground that it is not competent to show by parole what judicial action has been taken

by the Interior Department, nor whether they have received such map as a sufficient map of definite location or otherwise; and upon the further ground that the map and line of route of the Atlantic and Pacific Railroad between the points mentioned and across the State of California, having been finally accepted and approved by the Secretary of the Interior, such action is not open to question by third parties; and upon the further ground that such map and line of route of the Atlantic & Pacific Railroad Company, having been accepted and approved by the Secretary of the Interior of the United States, acting judicially and in his discretion, is not subject to a collateral attack by these defendants, nor to question by these defendants at all; and upon the further ground that the lands involved in suit in this case, having been withdrawn for the benefit of the Atlantic & Pacific Railroad Company and reserved, were excepted out of the grant to the Southern Pacific Railroad Company, made by the Act of Congress of March 3, 1871, as shown by the terms and conditions of said grant; and upon the further ground that the question calls for the judgment and opinion of the witness upon a matter which has been conferred exclusively upon the Secretary of the Interior to determine; and upon the further ground that the exhibits referred to are not authentic maps showing the line of definite location of the Atlantic & Pacific Railroad; and the further objection that the validity of the location of route by the Atlantic & Pacific Railroad Company from the Colorado River to Ventura has been adjudicated as a good and sufficient location of definite location by the Supreme Court of the

United States and the United States Circuit Court for the Southern District of California, as shown by the records of those cases in evidence herein.)

A. On December 6th, 1871.

Q. There appears a red flag erected on the southwest quarter of Section 16, Township 9 North, Range 12 West, when was the road surveyed to this point?

(Same objection.)

A. On the evening, or end of the afternoon, of December 6th, 1871.

Q. What means were used by the surveying party for the purpose of making this location, what instruments?

(Same objection.)

A. The ordinary instruments in use for surveying railroads, commonly known as the engineer's transit, chain, line rods, Y level, level rod, and sundry axes and other tools.

Q. Did you see the surveyors at work performing these labors?

(Same objection.)

A. Yes, at numerous points on the line of the Southern Pacific Railroad as shown on Exhibit 59, and it would require a reference to ancient diaries to say with certainty that I saw them on any one day, but I was with them a great part of the time.

Q. Continuing to the right on this Exhibit 59, when was the surveying completed on Section 33, Township 8 North, Range 12 West, S. B. M.?

(Same objection.)

A. The surveying was completed some time during the day of December 7, 1871.

Q. Do these flags in red, which appear along the line of this road, with the words "located" on certain days, indicate correctly upon what days the surveying parties actually surveyed upon the ground and located the line on the sections of land upon which said flags and statements appear?

(Same objection.)

A. They do; these maps were prepared in the draughting office of the Southern Pacific Railroad Company, by draughtsmen hired for that purpose, under the direction of the Chief Engineer, and the dates were carefully copied on to the maps from the field books of the parties making the survey, in which field books they habitually, and by a definite order of the Chief Engineer, reported from the beginning to the end of each day's work; to that extent I will certify they are correct, with all possibility of clerical errors of a minute character.

Q. Exhibit 59 shows that the line of road in Section 23, Township 5 North, Range 12 West, S. B. M., was located December 25, 1871; were you on the ground at that time?

(Same objection.)

A. I was.

Q. Did you see the surveying employees of the Southern Pacific Railroad Company at work at this time locating the road?

(Same objection.)

A. I did.

Q. Is the location over all of the territory that you have mentioned, and up to this point, made with reference to elevations above the sea, depressions, and the topography of the country?

(Same objection.)

A. It is.

Q. Do you know whether the Southern Pacific Railroad Company, by its surveyors, continued to locate this line of route as indicated on Exhibit 59, from Mojave to San Fernando by daily and continuous work?

(Same objection.)

A. They did.

Q. Were they on the ground continuously?

(Same objection.)

A. They were there on the ground continuously.

Q. Did they perform their labors every day, the condition of the weather permitting?

(Same objection.)

A. They did.

Q. Is it a fact that the line of road as indicated on the Exhibit 59, was finally located at San Fernando on February 3, 1872?

(Same objection.)

A. It is.

Q. Were you there at that time?

(Same objection.)

A. No, sir; I was not.

Q. Do you know whether or not the surveyors finished their work on that day, as indicated upon Exhibit 59?

(Same objection.)

A. I know from the records and dates in their field books that they did, which were the only means that I had of knowing, as I was not personally present.

Q. This Exhibit 59 shows that the initial point of construction was at San Fernando; will you explain

why this was the initial point of construction on this section of the road, and why the construction of the road went back over the located line in the reverse way, instead of being constructed in the direction from northeast to southwest, as located?

(Same objection.)

A. The road was constructed from San Fernando to Los Angeles, and south of that point in advance of the other construction, from Mojave to San Fernando, as I understand it, for the reason that there was a good local business in Los Angeles county, and it warranted the shipment of construction material to Los Angeles by water, and the construction of the road in that manner; the road was graded from San Fernando south, going through Los Angeles, and the track was laid from Los Angeles northerly to San Fernando, and southerly from Los Angeles towards Spadra; the construction of the road from Mojave to San Fernando was done in this manner: The road was graded and the track laid from San Fernando northerly to near the southerly end of the San Fernando tunnel; also the road was commenced at Mojave as a continuation of the road running from San Francisco to Mojave, and built from Mojave southerly to or near the San Fernando tunnel; when the San Fernando tunnel was completed the tracks were brought together, and, as I remember it, at a point somewhat to the north of the San Fernando tunnel, which point could be definitely ascertained if desired.

Q. Returning to the surveyed location of the line of route as you have been illustrating upon Exhibit

59, do I understand that they continued from Mojave to San Fernando, and thence on in the direction of the road as indicated by the Acts of Congress?

(Same objection.)

A. They did.

Q. Turning to Exhibit 60, can you testify whether the surveying parties continued from San Fernando thence on down towards Los Angeles?

(Same objection.)

A. I can, from the dated records of their daily work in their field books in our possession.

Q. Do you know whether these maps have delineated upon them correctly the dates when these surveyed locations were made?

(Same objection.)

A. They correctly show the dates of the surveyed location as taken from the dated field books.

Q. Were those field notes returned to the offices of the Southern Pacific Railroad Company by the surveyors in the field?

(Same objection.)

A. They were.

Q. Do you know as a fact whether or not the constructed line of the Southern Pacific Railroad Company follows that surveyed route as indicated on these Exhibits 59, 60, 61, 62 and 63?

(Same objection.)

A. It does, so far as I know.

Q. Did you see the road in the course of construction upon these lines?

(Same objection.)

A. I did not in Exhibit 60.

Q. As indicated on Exhibit 59, did you see the road in course of construction upon the surveyed lines?

(Same objection.)

A. I did, many times.

Q. Did you take part in it?

(Same objection.)

A. I took part in it.

(Adjourned by consent to Saturday, Sept. 23, 1893,
at 10:30 A. M.)

San Francisco, September 23, 1893.

Mr. Redding—Mr. Call, you may take Mr. Hood on cross-examination of the matters I have examined him upon. I will desire to examine him further in regard to other matters hereafter.

CROSS-EXAMINATION OF WILLIAM HOOD.

Mr. Call—Q. When did you first go into the employment of the Southern Pacific Railroad Company?

A. It is a difficult question to answer exactly, for the reason that the Southern Pacific and the Central Pacific Railroad, were in certain ways allied in their offices and departments for convenience of business, and in some years, between the spring of 1867 and the time at which the Central Pacific and Southern Pacific roads, and their branches were leased to the Southern Pacific, I would sometimes in the same year work a part of the time for the Central Pacific technically and theoretically, and part of the time for the Southern Pacific technically and theoretically; I will

say further, that I was essentially in the employment of the Central Pacific from the spring of 1867, and of the Southern Pacific nearly as far back at odd times.

Q. Were you in the employment of the Southern Pacific during the whole of the year 1871?

A. As near as I remember, I was; I could not answer such a question as that positively without elaborate investigation.

Q. In what capacity were you in their employ in that year?

A. In that year I was assistant engineer for both the Central Pacific and Southern Pacific Companies alternately, as described, to the best of my remembrance?

Q. Did you have cognizance of what surveys were made on the line of the Southern Pacific during that year?

A. I did.

Q. Do you know all of the surveys that they made upon the line from Tehachapi by way of Los Angeles to the Colorado River during that time?

A. I know them, and know of them.

Q. What time did the first survey commence upon that line?

A. As for that question I should be obliged to refer, in order to answer accurately, to the certified maps, or the field books, if they could be found.

Mr. Call—I will request you to refer to anything you can to refresh your recollection.

Q. What was the first survey made from Mojave southward by way of Los Angeles to Fort Yuma?

A. December 4, 1871.

Q. Was any survey made upon that line prior to that time?

A. I do not know of any.

Q. You would have been likely to know of it if there was?

A. I would have been likely to know of it if there was.

Q. At which end was this survey commenced to which you have referred—at the Mojave end or the Yuma end?

A. At the Mojave end.

Q. And that was in December, 1871?

A. December 4, 1871.

Q. Who had charge of that surveying party?

A. I had charge of the work in a general sense; I was often on the ground at that time, and Mr. E. A. Phelps was constantly with the party at this point, and other men whose names I do not remember at present, and would have to look them up.

Q. How many men composed the party?

A. Speaking generally, about twelve men, at sometimes more, and at sometimes less, and this could only be accurately stated by reference to payrolls and records of that description at that date.

Q. As the survey proceeded southerly from Mojave towards the Soledad Pass, was the ground considerably broken, or was it level in character?

A. The ground in some places was level in character, and in some places considerably broken; there was a great variety of ground, and none of it very formidable broken until reaching a certain portion of Soledad Canyon, so called, and that was not very formidable.

Mr. Redding—Do you mean broken by nature, Mr. Call?

Mr. Call—Yes, sir.

Q. As you entered the mountains towards Soledad Canyon, going southerly, how did you mark the line upon the ground?

A. With stakes¹ driven partly into the ground enough to make them stand with a reasonable degree of security, and at certain points adjacent to those stakes were stakes driven entirely into the ground, with carpet tacks put in them at the true point which was sought to be indicated by the stake.

Q. Were those stakes driven in such a way, and of such a size, that they would last for some time, or was it temporary in its character at that time?

A. They would last, under ordinary conditions, a long time; some stakes might get knocked out by cattle, and some stakes, where they came in creeks, might get washed out by floods, but in general the stakes would stand until they rotted enough to fall over.

Q. How long would that be?

A. It varies from two to fifteen years, in my experience, owing wholly to the following points: The class of wood of which the stakes were made, both as to kind of wood and degree of seasoning; the character of the ground itself has a very important bearing on the matter; also the amount and frequency of rainfall, alternating with dry times, and a variety of causes.

Q. In your judgment, how long would stakes last at that point at Soledad Canyon?

A. My judgment is, exclusive of accident to the stakes either by floods or cattle, or human beings, that in the sandy portion of the soil they might last, if seasoned, four or five years, and in the clayey portions of the ground they might last longer, perhaps six or eight years, or more; it is a question that cannot be answered with any definiteness as to time, really.

Q. When your party entered the Soledad Canyon going south and proceeded to mark the line, did you make a map as you proceeded, or notes, to show where the location was made?

A. We did not make a map as we proceeded, as nearly as I can remember; it is not a common custom to do so.

Q. How did you do it?

A. We made no maps except such working draughts or plats as were required on the ground, which working draughts or plats we universally, on that and all other work that I have ever been connected with, destroy or burn up when used each time we move camp.

Q. What kind of a record do you keep in order to show where the survey was made, in order that a map can be made therefrom?

A. We keep in the field what are known as transit and level note books—the note books applies to both classes of books—and these note books show respectively the transit books, the angular deflection of the line, and the curves, and all that kind of data, and the level notes show the elevations of the ground's surface at sundry points which are necessary for the making of the profile of the road, both for information and constructive purposes; and we

also in some instances keep topography notes in separate books, and in some instances we keep them in the transit book, depending on the roughness of the country, and how detailed we need it; and at no particular point can I at this late date say whether we did or did not keep topography books, without investigation.

Q. Referring to "Defendants' Exhibit before the Special Examiner, No. 59," and which you have testified to as being a correct map of the line of the Southern Pacific Railroad, from Mojave, by way of Soledad Canyon to Los Angeles and there easterly, I call your attention to the line of the road, as it is marked here on this exhibit, running through certain sections of land, as shown by Government survey; please explain by what manner you located that line through those sections as they are delineated, so that you know that that line is located in that manner across those particular sections?

A. I can illustrate this by taking it up in detail as far as required, as for instance, the section corner between Sections 16 and 17, and 20 and 21 of Township 9 North, Range 12 West, San Bernardino Base and Meridian, was located in the following manner: at what is known as Engineers' Station 15,881, there was placed an engineer's transit instrument, and an angle was turned from the center line of the railroad looking southerly to sight upon the section corner before described, or a rod or flag held thereon; this angle was 101 degrees and 15 minutes to the right—to the right meaning, as commonly noted, looking forward and turning to the right from the line of the

railroad forward or southerly from the engineer's station named; then the distance from Engineers' Station 15,881 was measured in a direct line from said Engineers' Station to said section corner, and was found to be 1390 feet; then other corners were located in a similar manner, as, for instance, the section corner between Sections 20 and 21, and 28 and 29, Township 9 North, Range 12 West, San Bernardino Base and Meridian; this enabled, from the notes sent into the office, the draughtsman to plat in reference to the railroad line the exact position of these section corners on any or a suitable scale, and that in connection with still other connections made in the same manner between the line of the railroad and the section corners, enabled the north and south and east and west lineal lines of the sections to be definitely and reasonably closely settled.

Q. Then the map of the surveyed line was made up from the field notes as connected? A. It was.

Q. Can you tell me who made the map of definite location, or surveyed line, as delineated upon this map of which this purports to be a copy?

A. It was made, to the best of my knowledge and belief, in the office of the engineers' department of the Southern Pacific Railroad Company by a draughtsman, or draughtsmen, possibly, who were employed at that time, and whose names I am entirely unable to give.

Q. And they made it up from the field notes?

A. They made it from the field notes; and I will say that I testify to this effect without any knowledge, of my own knowledge, of the absolute mechanical work of making this particular map, but simply

that it is a common, and is a usual practice, and has always been done, as far as I know.

Q. You did not make the map yourself?

A. I did not; I never make any maps, and never have made any maps, I have no time for it.

Q. Can you produce before the Special Examiner the field notes from which the map was made?

A. I think I can; I will say in reference to that matter that the notes are very long ago, and in the moving of the Chief Engineer's office from one building to another, and transmission between Sacramento and San Francisco, of various notes for various purposes, that of my own knowledge I have looked for certain ancient notes pertaining to other matters, and have failed to find them; and it was reported to me by old employees that certain boxes of notes were lost in transmission and never found; and I could only say by investigation whether we have or have not any of these particular notes at this time, they being of no particular value, and have not been taken care of as well as you would think. I have in some instances found notes as old as of 1867, and have also failed to find notes as late as of 1880.

Q. When was this map made of which Exhibit No. 59 purports to be a copy?

A. I have no information on that subject whatsoever; the map itself indicates the time at which it was certified; that is all the knowledge I have, as taken from the map.

Mr. Redding—We have offered this map as an exemplification of the original on file in the Interior Department, and it is certified by the Interior Department on this very map as being a copy.

Mr. Call—I understand. The witness testifies as to its being a correct survey, and I am inquiring into that.

The Witness—I can answer you in relation to matters with which I am personally familiar, but when it comes to dates of making maps, and so on, I must depend on the records, like anyone else; I have not a universal memory.

Q. Without a comparison of this map with the field notes, can you testify as to its correctness?

A. I can.

Q. In what manner? By what means do you state that?

A. I should testify as to its general correctness in all of the important details from my intimate knowledge of the ground and topography of the country, of the railroad itself, both as being constructed and since construction, and that would be all that I could testify to directly of my own knowledge; for all other particulars we would have to rely on the accuracy of the mechanical work of the draughtsmen, together with the accuracy of the mechanical work of the draughtsmen in the Secretary of the Interior's office.

Q. When you proceeded to locate the line upon the survey which you made upon the ground, how did you ascertain what section corners you were at?

A. It will be remembered that this survey was a part of a very long survey, originating at a point much farther north, and at a point very far distant; we had connected gradually on the section corners, and therefore, it was very easy for us, with an exceedingly rough plat, to know as the survey progressed very

IN THE
UNITED STATES SUPREME COURT,

No. 770

OCTOBER TERM, 1895.

TRANSCRIPT OF RECORD.

SOUTHERN PACIFIC RAILROAD
COMPANY, et al.,

Appellants.

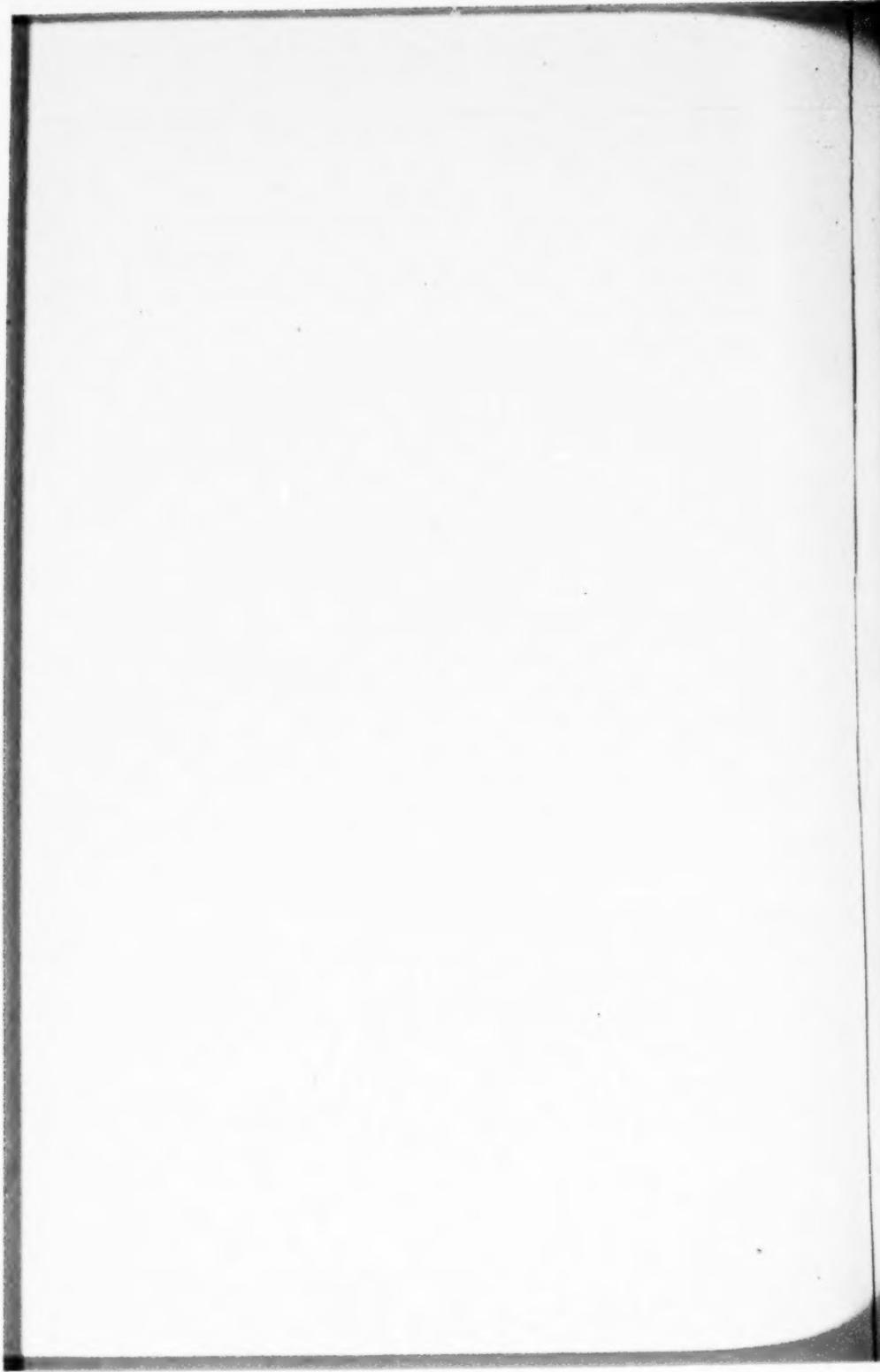
vs.

THE UNITED STATES.

VOLUME 2.

(Pages 692 to 1236.)

*Appeal from the United States Circuit Court of Appeals for
the Ninth Circuit.*



nearly in reference to our survey where the successive section corners should be located, then measuring to such point, in some instances a very trifling search would enable us to find them exactly; in some instances, where the posts were missing there would be a slight mound which we could dig into, and identify by the charcoal and the like which is provided for in the regulations for making such surveys; and where the posts existed, they were almost invariably clearly marked with the section, township and range; and this information, coupled with our check on its accuracy, by knowing what it should be, in the manner I have described, enabled us to identify them where they existed at all with the greatest certainty; it is a very ordinary process, and all engineers are familiar with it.

Q. Referring to Exhibit 59, to the various distances purporting to be given upon that map from the line of road to various section corners, were those distances to those corners ascertained at the time the survey was made?

A. In some instances they were; all such distances were ascertained while the survey was being made, where the section corners were reasonably near at hand to the line of the railroad survey, and where they could be readily found; the time of such a party, however, is too valuable to waste in too elaborate a search for section corners, and such section corners as they did not readily find in the first search, were afterwards found and connected on the line of the survey in the same manner by other entirely different and small parties.

Q. What do you mean by reasonably near—how far from the line of the road?

A. I mean if it were a level country and a very trifling amount of search developed a section corner standing up and visible, in sight, and easily found within a distance of from nothing to a quarter of a mile, and occasionally even farther, that it would be considered worth while to connect right then and there, as a means of continuing our constant knowledge in relation to the section corners.

Q. Can you designate on this map, commencing at the north line of Township 5 North, and from there to the west line of Range 15, what section corners were ascertained and what distances were ascertained at the time the survey was made?

A. It would be entirely impossible for me to attempt it; it would be an effort of memory that would be entirely beyond me.

Q. You could not state, then, what data was obtained subsequently?

A. No, I could not distinguish from data obtained at the time of the survey and subsequently, excepting to this extent, that all connections between the line of the survey of the Southern Pacific Railroad and the Government section corners that are shown upon this Exhibit No. 59, must have been made prior to the making of the map itself.

Q. This map, I believe, purports to be a copy showing the constructed line of road?

A. Exactly.

Q. Was that data ascertained before the road was constructed, or afterwards?

A. The data for the profile of the ground's surface, the data for the center line of the railroad topographically, and in reference to its courses and exact position on the ground, and for many of the section corner connections, as herein described, was obtained at the time of the original survey, very long before the construction of the railroad; you know how long it was; the data for the trestle work and culverts on the profile was necessarily obtained along with the construction of the road itself.

Q. Then you cannot state what portion of those distances delineated upon this map were ascertained at the time of the survey, and what were ascertained subsequently?

Mr. Redding—I submit he has stated exactly that, Mr. Call.

Mr. Call—Let the witness state.

A. I can only state, as I did before, that such section corners as could readily be found were connected on.

Mr. Call—The question is whether you can designate them or not at this time upon this map?

A. I could not, with any certainty whatever.

Q. How long was data being collected for the purpose of making the map of which this is a copy?

A. As that involves all subsequent section-corner connections prior to the making of the map, I could not answer that question specifically at all, excepting generally from the time of the commencement of the first survey until the date of the making of the map, which must have been prior to the date of the certificate of the map, necessarily.

Q. In making a survey through the Soledad Canyon, and your subsequent work there, did you observe any work done, or having been done, by the Atlantic and Pacific Railroad Company?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, for the reasons that the Government in this case has introduced its map as the definite location of the alleged line of route of the Atlantic and Pacific Railroad Company, and that the map speaks for itself and shows over what territory it purports to have crossed and been surveyed, and shows the townships, ranges and sections and Government designation in relation thereto; that the Government is bound by said map, and therefore the testimony of the witness is incompetent, irrelevant and immaterial for those reasons.)

A. I have no knowledge of any work done by the Atlantic and Pacific Railroad Company in Soledad Canyon in the sense of knowing that it was done by them of my own knowledge.

Q. State what you know about grading being done in there, and who furnished the information that it was done?

(Same objection.)

A. I will state that I have seen along the sides of the hills certain excavations, the material therefrom being put into certain adjacent dumps, all of them very small and trifling in character, which might or might not have been, and at any rate could have been, the beginnings of the grading of certain cuts and adjacent banks of a railroad.

Q. Did it or did it not have the appearance of being railroad work for railroad grading?

(Same objection.)

A. It did.

Q. How many miles did that extend up and down the canyon?

(Same objection.)

A. It extended in very generally very short patches of twenty to thirty feet in length, and in some instances of four hundred or five hundred feet in length at occasional points and very few in all, from a point perhaps a half a mile east of the summit of Soledad Pass on the line of the Southern Pacific Railroad to a point perhaps half a mile westerly or northerly up the canyon from what was then known as Langs, Langs being the name applied in that country to the residence of a man named Lang.

Q. A distance of about how far?

(Same objection.)

A. A distance of about seventeen miles.

Q. And between what points as shown upon Exhibit 59?

(Same objection.)

A. I answered that already.

Q. The points you refer to are shown on Exhibit 59, that is from the summit of Soledad to Langs?

(Same objection.)

A. They are.

Q. Did you see any work below that point westwardly from Langs?

(Same objection.)

A. I did not.

Q. Did you see any parties of workmen below there?

(Same objection.)

A. I did not.

Q. Did you see any outfit below there?

(Same objection.)

A. I did not.

Q. What did you see below Langs west of Langs with reference to any grading or work being done or to be done?

(Same objection.)

A. I saw some time—and I don't remember just when it was—I had pointed out to me something that looked like grading along the side of the hill between Langs and Newhall, and which, out of curiosity, I investigated personally and found that it was the remains of a very old irrigating or mining ditch, I could not determine which.

Q. Did you see any parties of workmen below Langs?

(Same objection.)

A. I did not.

Q. What time was it that parties were working in there?

(Same objection.)

A. I do not know absolutely, as I did not see the grading going on, as stated before, and I could not answer the question of my own knowledge.

Q. Answer it as nearly as you can?

(Same objection.)

A. It was, I will say, generally, 1871 and 1872, as near as I know, but I do not know specifically in a manner that I would be competent to testify upon.

Q. Was the work which you saw done there in the Soledad Canyon?

(Same objection.)

A. Yes, sir; it was.

Q. How far from the present line of the Southern Pacific Railroad?

(Same objection.)

A. It varied at various points; at one point near the summit, about half a mile southerly or westerly from the summit, it might have been fifteen or twenty feet off, and at several other points in the next two miles, more or less, southerly and westerly from the summit, it might have been from thirty to two hundred feet off, and farther down the canyon where it is narrow and more of a confined gorge, the constructed line of the Southern Pacific Railroad occasionally crossed such grading work as you speak of, and occasionally it would be very near.

Q. Who did you understand that grading work was being done for?

(Same objection, and the further objection that it calls for the opinion of the witness, and is not proper evidence.)

A. It was commonly reported that it was being done at the expense of the Atlantic & Pacific Railroad Company; I have no distinct remembrance from whom I obtained that information, but I remember that it was a common report.

Q. Did you along during those years have any conversation with any of the Atlantic & Pacific people engaged in that work?

(Same objection.)

A. I did not.

Q. Did you ever meet any of the surveyors or engineers in connection with it?

(Same objection.)

A. We habitually avoided each other, so far as possible, for obvious reasons.

Q. So as not to come in conflict?

(Same objection.)

A. I would not know what the word conflict meant in that sense, but it is a general principle that all engineers endeavor to have no relations with anybody, and give no information to anybody without the orders of their employers; and I should have considered it a courtesy professionally to have asked the employee of another company any questions whatsoever under any circumstances.

Q. Both companies, I suppose, were making a rush to get in there and occupy the ground first?

(Same objection, and the further objection that it is not proper cross-examination and calls for the opinion of the witness.)

A. I have no knowledge as to that; it is a common habit amongst engineers when they are given any work to do to do it as fast as they can.

Q. Did you meet any of the engineers of the Atlantic & Pacific Railroad?

(Same objection.)

A. I had no relations with them whatever; I have seen some engineers who were said to have been engineers of the Atlantic & Pacific Railroad by common report.

Q. Did the Southern Pacific Railroad Company occupy any of that grading which you refer to there as having been made by another Company?

(Same objection.)

A. The Southern Pacific Railroad Company did not occupy any of the grading work referred to, to the best of my remembrance, in the sense of the center lines coinciding and laying track upon such grading at the same height or in the same direction; as I before stated, the line of the Southern Pacific Railroad in some instances crossed the grading referred to at an angle; I remember of no instance where it was identical with it.

Q. Were the two lines practically upon the same route, or were they not?

(Same objection, and the further objection that it has not been shown that the Atlantic and Pacific Railroad Company has made any line of location in reference to the public surveys, or by any of its own surveys of this locality, and the question is intended to obtain an answer from the witness without any evidence existing on the part of the complainant to show that the Atlantic and Pacific Railroad Company had located a line in this locality; furthermore, upon the ground that it is incompetent, irrelevant and immaterial from the fact that the Government in this case has introduced its maps, alleging them to be maps of definite location of the Atlantic and Pacific Railroad Company, showing a totally different line of route than that occupied by the Southern Pacific Railroad Company through this territory, and in nowise conforming to the elevations and depressions of the

earth's surface, and having no relation to the grades, plains, angles and differences of the earth's surface in this territory.)

A. I know nothing about any two lines, such as are referred to, through the Soledad Canyon.

Q. I am referring to the line which you have spoken of on which some grading had been done.

(Same objection, and the further objection that the witness has not referred to any other line of any railroad company, but simply to evidences of some grading in isolated spots; and therefore the question is misleading and calls for an answer of the witness not predicated upon any testimony or any facts precedent thereto.)

A. I am not aware of referring to any line upon which grading was done.

Q. I am referring to the grading which you have spoken of as having been done there as a line; now that you understand me, I repeat the question?

(Same objection, and the further objection that the witness has already answered the question.)

A. I can only say that the isolated pieces of grading that have been described in previous answers were, as before stated, near to the line of the Southern Pacific Railroad Company as constructed.

Q. If a railroad were built upon and along where this grading was being done, would it have been a practicable grade, or would it not?

Mr. Redding—I will object to the question on the grounds before stated, and for the further reason that the witness has not stated that any gradings or evidences of disturbance of the earth existing in this territory amounted to a line of any railroad.

Mr. Call—I object, Mr. Examiner, here, and I ask you, as a Court, and having the power of a Court of common law, to prevent the counsel from posting the witness in advance in the form of objections, and thereby directing him what to testify; and I ask the Examiner to make an order directing counsel to desist from coaching the witness under guise of objections. The Examiner has that power, as a Court of common law.

A. That calls for an expression of opinion on my part, and would necessitate my having in some manner instrumentally determined the horizontal and vertical positions in reference to the earth's surface, and the sea level respectively of these isolated small patches of grading; I then could have said positively whether it were possible to continue grading and connect these isolated patches of grading with such a form of grading as to make a practicable route of railroad; as I have never done anything of that kind, I could not say yes, or no, absolutely to the question.

Mr. Call—Q. From your knowledge of the grade of the Southern Pacific Railroad through the Soledad Canyon, and from the testimony which you have given, with the grading having been done in there by the company which purported to be the Atlantic & Pacific Railroad Company, could you state approximately whether it was or was not a good grade?

(Same objection.)

A. It is my opinion, that the isolated patches of grading before referred to could have been connected by other grading to have formed a practicable grade for a constructed line of railroad.

Q. In going over and examining the Atlantic & Pacific Railroad line from the western boundary of Los Angeles county eastwardly, did you survey the route and ascertain the grade along through the Santa Clara River from the western boundary line of Los Angeles county to Soledad in the canyon along the river, as indicated upon the Exhibit marked 54?

A. The route was not surveyed in the sense of re-tracing it from the maps of alleged survey of the Atlantic & Pacific, as shown on Exhibit 54, on account of the fact that such exhibit does not give the data for the exact position and angular deflections and the stations thereof with such closeness as would be required for such a purpose, excepting where the alleged survey as shown on Exhibit 54 crosses the lines of Government land surveys.

Q. Then you did not make a survey up the Santa Clara River and Soledad Canyon itself, for the purpose of ascertaining the grade of the Atlantic & Pacific Railroad?

A. We did make surveys to locate and identify the position of the alleged survey of the Atlantic & Pacific Railroad as shown on Exhibit 54 for a part of the distance between the westerly boundary of Los Angeles county and to and into Soledad Canyon, and to and easterly of Soledad at certain points, as notably and particularly where said alleged survey as shown on Exhibit No. 54 crosses ~~the township lines of~~ the Government land surveys, and also where said alleged survey crosses the north and south section lines of mile square sections in the same township and further, such instrumental surveys with level instru-

ments as would obtain accurately the height of such points above the sea level, together with the heights of any notable intermediate points between the section lines before mentioned.

Q. In making your alleged survey for the Atlantic & Pacific line of road when you were in Township 4 North, Range 14 West, how far were you from the Santa Clara River?

A. At the easterly boundary of Township 4 North, 14 West, San Bernardino Base and Meridian, about one mile and one-quarter from the river.

Q. Did not you know that the line of the Atlantic & Pacific Railroad definite location in that township was in the river bed, as shown upon their map of definite location? A. I did not.

Q. Don't you know that it is so marked in the river? A. I do not.

Q. Referring to Exhibit 54, state whether the Atlantic & Pacific line is marked in the river or not?

A. In Exhibit 54, in Township 4 North, 14 West, San Bernardino Base and Meridian, the Santa Clara River is marked as crossing the line of alleged survey of the Atlantic & Pacific Railroad, as shown on that Exhibit 54.

Q. That is, they occupy the same identical line?

A. The alleged survey and the Santa Clara River as shown on the map Exhibit 54, cross and recross each other to a certain extent in Township 4 North, Range 14 West, San Bernardino Base and Meridian.

Q. Occupying substantially the same line?

A. Occupying substantially the same line or position on Exhibit No. 54.

Q. Then in running the Atlantic and Pacific survey which you say you have lately made, why did you go away from the river and up into the mountains to mark that line?

A. Because the only means of identifying the position on the earth's surface of the alleged Atlantic and Pacific survey, as shown in Exhibit 54, is, as stated in certificate thereto attached, by means of the lines of public surveys in connection with—to quote the words of the certificate—"surveyed line of the Atlantic & Pacific Railroad;" and as such Exhibit No. 54 specifically states that their line of alleged survey is correctly shown in reference to the lines of Government surveys, it was supposed to be, by me, correct information.

Q. In running this pretended survey of the Atlantic & Pacific line, which you say you ran, when you were in Township 4 North, 13 West, how far were you from the Santa Clara River?

A. We found the line of alleged survey of the Atlantic & Pacific Railroad in Township 4 North, Range 13 West, San Bernardino Base and Meridian, as shown on Exhibit 54, to be varying distances from the Santa Clara River, as follows: about three-quarters of a mile southerly from said Santa Clara River, near the middle of said township, and about one and one-quarter miles southerly from the Santa Clara River, at the westerly boundary of said township, and about three and one-quarter miles southerly from the Santa Clara River, at the easterly boundary of said township.

Q. In Township 4 North, Range 12 West, how far were you from the Santa Clara River or Soledad Canyon?

A. We found the line of the alleged survey of the Atlantic & Pacific survey, as shown on Exhibit 54, to be in Township No. 4 North, Range 12 West, San Bernardino Base and Meridian, about three and a-quarter miles southerly from the Santa Clara River, at the westerly boundary of said township, and in the middle of said township, about three and a-quarter to three and a-half miles south of the Santa Clara River, and at the easterly boundary of said township the Santa Clara River hardly exists; it develops into a series of dry gulches.

Q. Then why did you run the alleged survey of the Atlantic and Pacific Railroad so far from the Santa Clara River and Soledad Canyon when the line of route of that, as shown on Exhibit 54, is marked in the canyon, and immediately adjacent to the river?

Mr. Redding—Defendants object to the question on the ground that it states facts that do not exist. On the Exhibit 54 there is no evidence of any canyon on that map at all, but the alleged line of route appears conformably with reference to townships, sections and lines of Government surveys.

Mr. Call—The witness has frequently referred to Soledad Canyon, and its location, and Santa Clara River, on the other exhibits in this case.

A. Because I located the alleged survey of the Atlantic & Pacific Railroad, as shown on Exhibit No. 54, in reference to the lines of the Government land surveys, which the certificate on Exhibit No. 54 states it is located in reference to.

Q. Then did you or did you not ignore the natural features of the country in running that line as indicated upon that map?

Mr. Redding—Defendants object upon the ground heretofore stated, and the further ground that the witness has testified that he located the Atlantic & Pacific Railroad in conformity with the survey, and line of route as indicated on the map of the A. & P. Company, and in reference to the public surveys.

A. I used the only accurate and reliable data that could be obtained from Exhibit 54, with reference to the position of their survey, namely: the position of their alleged survey in reference to the United States Government section points.

Q. Then you did not use as a point upon that line the place marked Soledad, on Exhibit 54 upon the river?

Mr. Redding—Defendants object upon the grounds before stated, and upon the further ground that the witness has already testified that he located Soledad as shown to exist on Exhibit 54, and also located it as it existed on the earth's surface.

Mr. Call—I object to the form of the objection. I insist upon an answer from the witness without reference to insinuations contained in the suggestions of counsel.

A. I found the relation of Soledad as shown on the alleged Atlantic & Pacific Survey—

Mr. Call—That is not an answer.

Q. Did you go by the way of the place marked Soledad upon the Santa Clara River, as shown upon Exhibit 54, when you ran your line of alleged survey of the Atlantic & Pacific Railroad?

Mr. Redding—You mean as it is marked on Exhibit 54?

Mr. Call—Just as I have stated. It is clear.

A. I identified the position of Soledad on the ground, on the earth's surface, as shown on Exhibit 54.

Q. Was it upon your line of survey which you ran?

A. It was on the line of original survey of the Atlantic & Pacific Railroad, as we located it upon the ground, upon the earth's surface.

Q. Did you not in your direct examination testify that Soledad was several miles from the line you ran?

A. I testified that Soledad in fact on the surface of the earth was several miles, or a considerable distance, from Soledad, as shown on the Atlantic & Pacific alleged survey, as indicated on Exhibit 54.

Mr. Call—I ask that the question be repeated. Did you, or did you not, testify that Soledad, as shown upon Exhibit 54, was several miles from the line you ran?

A. Which line I ran.

Q. The survey which you made when you were attempting to locate the Atlantic & Pacific Railroad?

A. I did not to my knowledge testify that Soledad, as shown on Exhibit No. 54, was several miles, or any considerable distance from the line of the alleged survey of the Atlantic & Pacific Railroad as shown on Exhibit 54, and as relocated by us at certain points, as before described, on the ground.

Q. State whether the place marked Soledad is or is not marked upon the Santa Clara River, as shown by Exhibit 54?

A. Soledad on Exhibit 54 is shown adjacent to and on the southerly side of the Santa Clara River as it, the Santa Clara River, is shown on Exhibit No. 54.

Q. Did you not testify that when you ran your line of alleged survey through that township you were from two to four miles from the Santa Clara River?

A. I did.

Q. Then it is not true that your line of survey which you ran was from two to four miles from the place marked Soledad on Exhibit 54?

A. It is not true; the survey that we made to identify the position of the alleged survey of the Atlantic & Pacific Railroad, as shown on Exhibit 54, was at the point marked Soledad on Exhibit 54, at the same point on the earth's surface as Soledad as shown on Exhibit 54 occupies on the earth's surface in reference to the lines of the Government surveys.

Q. Then, if Soledad is upon the Santa Clara River, and they both are at the same point, and you were from two to four miles from the Santa Clara River, explain why you were not from two to four miles from Soledad?

A. This misunderstanding seems to be on account of the confusion of ideas as to Soledad in fact and Soledad as shown on Exhibit No. 54.

Q. When you were running a line for the Southern Pacific Railroad, or making surveys for that Company in the Soledad Canyon, do you know what lands were surveyed at that time and what were unsurveyed?

A. I know in general, and in particular it would be shown with reasonable accuracy on Exhibit No. 59, for instance.

Q. Can you now state what portion of that data which is upon that map was made at the time the sur-

vey was made, and what has been since made, in order that you can state definitely what townships were surveyed and what townships were unsurveyed at that time?

A. I cannot, excepting in this manner, that the map shows where the section lines are indicated in full, the townships and sections that were surveyed at that time, with reasonable accuracy, and where the section lines are not indicated in full it would be an indication that they were not surveyed at that time.

Q. Referring to the certificates that appear upon Exhibit 59, it appears from the certificate of George E. Gray, Chief Engineer of the Southern Pacific Railroad, that he certified to this map on the 14th day of February, 1877; can you state what portion of the lands along that line of route were surveyed, and what were not surveyed at the time that certificate was made?

Mr. Redding—Defendants object as incompetent and not the best evidence, and furthermore that the Government in this case has introduced the maps of the Atlantic & Pacific Railroad Company, showing the Government township and range lines as of a date of 1872?

A. I will state to the best of my knowledge, and subject to correction, which correction can easily be made from the records of the United States Land Office, that the United States lands were all surveyed, excepting a portion of the distance between Township 4 North, Range 13 West, San Bernardino Base and Meridian, and the easterly line of Township 4 North, Range 15 West, San Bernardino Base and Meridian, and part of the distance specified which is embraced in the San Francisco grant.

Q. At what time?

(Same objection.)

A. At the time the certificate was made, February 14, 1877.

Q. Can you state what lands were surveyed along the line of the Atlantic & Pacific Railroad, as shown on Exhibit 54 from the western boundary of Los Angeles county to the point marked in Township 7 North, Range 7 East, at the time it appears from said map that said survey was made, to-wit, between June 1st, 1871, and February 1st, 1872?

(Same objection.)

A. I cannot.

Q. Did you or did you not make a survey for the purpose of ascertaining the line and grade of the Atlantic and Pacific Railroad through Section 31, in Township 5 North, Range 9 West, San Bernardino Base and Meridian?

A. I did not.

Q. Did you in running your lines for the purpose of surveying the Atlantic and Pacific Railroad line, discover any stakes of the Atlantic and Pacific Railroad to delineate the line through the country where you ran?

A. No, sir.

Mr. Call—I request the witness to produce the field notes of the Southern Pacific Railroad survey as shown upon Exhibit 59, between Alpine and Newhall, and also the original map from which the map was made of which 59 is a copy.

(An adjournment was then taken by consent of counsel, until Monday, September 25th, 1893, at 11 A. M.)

San Francisco, September 25th, 1893.

CROSS-EXAMINATION OF WILLIAM HOOD.

(Resumed.)

Mr. Call—Q. Have you produced before the Special Examiner the map which I requested you to produce of the Southern Pacific Railroad line from Mojave, thence through the Soledad Cañon, by the Santa Clara River, to a point near San Fernando?

A. I have (producing map).

Q. And this map is the map referred to, is it?

A. This map is the map referred to.

Mr. Call—Q. The map referred to is marked "DD," and endorsed thereon, "Map and profile of Section No. 4 of the Southern Pacific Railroad and Telegraph Line, authorized by the twenty-third section of the Texas Pacific Railroad Act, approved March 3, 1871;" state when this map was made?

A. I cannot give the exact date, and can only say that it must have been made prior to the 14th day of February, 1877, which is the date of the certificate on said map.

Q. The certificate of whom?

A. The certificate of George E. Gray.

Q. State whether that map correctly represents the line of route of the Southern Pacific Railroad Company, and whether the endorsements on said map are correct?

A. It does so represent the route of the Southern Pacific Railroad Company, and the endorsements on said map are correct, both, so far as I know, to the best of my knowledge and belief; that is my usual exception, as to clerical details.

Q. Is this map the same as the map heretofore offered in this case and filed as Defendants' Exhibit before the Special Examiner, No. 59?

A. I have examined it, and it is the same, with the following exceptions: That certain new stations, more recently established, have been added to it, and certain other data, as for instance the line from Mojave to the Needles is shown for a short distance, and there are various pipe line surveys for water supply upon it, as for instance a survey for a proposed pipe line from the line of the railroad at what was then called Alpine Station to Barrel Springs, showing the location of Barrel Springs and its elevation above the sea level, and in some instances the names of stations have been crossed out and other names substituted, owing to changes in their name since that time; in these particulars and possibly some others which do not occur to me at this moment, the map has more information upon it than Exhibit No. 59, referred to by the question.

Mr. Call—I offer in evidence the following endorsements and certificates upon the map produced and referred to; and I ask the Special Examiner to compare the same and note its correctness, namely:

DD map and profile of Section No. 4 of the Southern Pacific railroad and telegraph line authorized by the twenty-third section of the Texas Pacific Railroad Act, approved March 3, 1871, commencing at a point in the northwest quarter (N. W. $\frac{1}{4}$) of Section Three (3), Township Two (2) North, Range Fifteen (15) West, San Bernardino Base and Meridian, and running thence in a

northerly line seventy-eight and fifty-nine hundredths (78.59) miles to a point in the northeast quarter (N. E. $\frac{1}{4}$) of Section Seventeen (17), Township Eleven (11) North, Range Twelve (12) West, San Bernardino Base and Meridian.

Map DD was adopted on October 11, 1876, by resolution of the Board of Directors of S. P. R. R. from initial point of Sec. No. One (1) of S. P. R. R. as delineated on map AA, to the terminal point of Section No. Eleven (11) S. P. R. R., length seventy-eight and fifty-nine hundredths (78.59) miles.

I, George E. Gray, Chief Engineer of the Southern Pacific Railroad Company, certify that this is a correct map of seventy-eight and fifty-nine hundredths (78.59) miles of the said road authorized by Section Twenty-three (23) of the Act of Congress incorporating the Texas Pacific Railroad Company, and for other purposes, approved March 3, 1871, commencing at the initial point of Section Number One (1) of said railroad at a point in the northwest quarter (NW $\frac{1}{4}$) of Section Three (3), Township Two (2) North, Range Fifteen (15) West, San Bernardino Base and Meridian, and running thence in a northerly direction 78.59 miles to a point in the northeast quarter (NE $\frac{1}{4}$) of Section Seventeen (17), Township Eleven (11) North, Range Twelve (12) West, San Bernardino Base and Meridian, showing the radii and lengths of curves and courses of tangents, with full and correct delineations of all topography within 3,000 feet of said line on either side thereof, and of all other topographical facts controlling or influencing the location of said line, or showing reasons therefor, and

giving the crossing of all streams and the location of all bridges and culverts, water tanks, wood and coal houses, section buildings, and machine and other shops, and that on this map is a correct profile of the ground and grades on the center line of said road. The horizontal scale of which profile is one thousand (1,000) feet to one (1) inch and the vertical scale thirty (30) feet to one (1) inch, and which profile also exhibits the alignment and the position of culverts, bridges and trestle works of all kinds.

(Signed)

GEORGE E. GRAY,

Chief Engineer of the Southern Pacific Railroad Company,

L. S. (Seal).

Subscribed and sworn to before me, Thomas H. Reynolds, County Clerk in and for the City and County of San Francisco, State of California, and ex-officio Clerk of the 12th District Court of said State, (the same being a court of record), this 14th day of February, A. D. 1877.

As witness my hand and the seal of said Court.

(Signed)

THOMAS H. REYNOLDS,

(Seal) County Clerk, and ex-officio Clerk of the
Court aforesaid.

Attest:

LOUIS M. FOULKE,

CALVIN BROWN,

EUGENE L. SULLIVAN,

Railroad Commissioners.

STATE OF CALIFORNIA,
City and County of San Francisco. } ss.

George E. Gray, of San Francisco, in said County
and State, being duly sworn, deposeth and says: that

he is the Chief Engineer of the said railroad from San Fernando to Mojave, as set forth above, being for the fourth (4th) section of seventy-eight and fifty-nine hundredths (78.59) miles, as shown by the line of route in connection with the lines of the public surveys on this map; that it has been completed and equipped as required by law; and that this line of route shows the correct locations of the said railroad.

(L. S.)

GEORGE E. GRAY,

Chief Engineer of the Southern Pacific
Railroad Company.Sworn and subscribed this 14th day of February,
A. D. 1877, before me,

(Seal)

CHARLES J. TORBERT,

Notary Public in and for said City and County
of San Francisco.

Office of the Southern Pacific Railroad Company,
San Francisco, California.

It is hereby certified, that George E. Gray is the Chief Engineer of the Southern Pacific Railroad Company, and that the location of the road as represented on this map is correct and approved by the Company, and also that the said portion of the said road has been completed and equipped in all respects as required by law.

CHARLES CROCKER,

President of the Southern Pacific
Railroad Company.

Attest:

JOSEPH WILLCUTT,

(Seal)

Secretary of the Southern Pacific
Railroad Company.

Mr. Redding—Mr. Call, we have both read these two certificates through carefully together, and if you are satisfied that the one on Exhibit 59 corresponds with the one which you have read, which is from the original in the office, I ask that we take the certificate of Exhibit 59 in lieu of offering in evidence this enormous exhibit, which is shown to be the original of which Exhibit 59 is a copy.

Mr. Call—I admit that the certificates and endorsements on the map referred to as "ID," are the same as the certificates and endorsements upon the map heretofore filed as Exhibit 59.

Q. In your direct examination you referred to the survey of the Southern Pacific line through the Sole-dad Canon and Santa Clara Valley, as having been made in fact in 1877; is that correct or is it not correct?

A. I have no remembrance of any such statement.

Q. You then were referring doubtless to the date of the certificate on the map?

A. Yes, sir; whenever I used the year 1877 at all I must have been; the road was constructed long before that.

Q. Upon Exhibit 59, which you have testified to as showing correctly the line of the Southern Pacific Railroad, I believe you said you commenced that survey from Mojave, running southerly?

A. I did, more accurately I said that the survey proceeded from Mojave southerly.

Q. When you reached Township 5 North, Range 12 West, as shown upon that map, Exhibit 59, how did

you locate the line of road so as to show its correct location upon the face of the earth, which could be delineated upon a map?

A. By the use of the engineering instruments commonly used for that purpose.

Q. How did you identify the line with reference to the Government surveys?

A. In the same manner as described in answer to a previous question.

Q. I wish you would in a general way state how you identified the distances of the line at various points from the lines of Government survey?

A. By finding the section corners that existed on the ground reasonably near to the line of the Southern Pacific Railroad, and connecting on them by angular and linear measurements in the manner usually employed.

Q. Did you do that in the year 1871?

A. I can, as I stated on Saturday, not say definitely which section corners were connected with the line of the Southern Pacific Railroad at the time such survey was made, and which section corners were connected with the said line of Southern Pacific Railroad at some subsequent time; some of them were connected at one time, and some of them at another time.

Q. Do you know, in point of fact, that the north half of Township 5 North, 12 West, was wholly unsurveyed during that year, 1871?

A. As I stated the other day, I do not know the dates of the survey in detail of the Government land subdivisions into townships and sections.

Q. Is it or is it not true that the lines of the Government surveys were run in that township along

after the year 1871, and that the location of the Southern Pacific Railroad, as constructed, was indicated upon those Government surveys, and that that is where the data was obtained by which this map was made and marked?

(Question objected to by defendants as not the best evidence; the official records of the United States Surveyor-General for California will show when the township and range lines and section lines of this part of the country were officially made and returned and plotted.)

A. I do not know.

Q. Then you do not know whether the markings and endorsements upon this map, in Township 5 North, Range 12 West, were taken from the Government surveys, or whether they were made from actual measurements?

(Same objection.)

A. I do not know, as I said before, in detail, at what time connections on the Government surveys were made, as shown on Exhibit 59.

Q. What is the next township you ran through, proceeding towards Newhall and San Fernando?

A. Township 5 North, Range 13 West, San Bernardino Base and Meridian.

Q. Do you know whether or not that township was surveyed in the year 1871 or 1872?

(Question objected to by defendants as incompetent and not the best evidence.)

A. I do not know.

Q. Then you do not know as to that township, whether the distances given from Government sur-

veys are delineated from surveys made, or whether it is made up by copying from the Government surveys subsequently made?

A. I do not know the time at which any particular connection between the lines of the Southern Pacific Railroad and the lines of the Government surveys as delineated on Exhibit 59 was made upon the ground in that township, or any other township?

Q. What is the next township you ran through?

A. Township 4 North, Range 13 West, San Bernardino Base and Meridian.

Q. Do you know whether any of those section corners were located by the Government in the years 1871 or 1872, in that township?

(Same objection.)

A. I do not.

Q. Do you make the same answer as to Township 4 North, 14 West?

(Same objection.)

A. I do.

Q. What is the next township you ran through?

A. Township 4 North, Range 15 West.

Q. What do you know about that township?

(Same objection.)

A. I make the same answer.

Q. What is the next township you ran through?

(Same objection.)

A. Township 4 North, 16 West.

Q. What do you know about Township 4 North, Range 16 West?

(Same objection.)

A. Township 4 North, 16 West, is mostly a Spanish grant, and I do not know when it was sectionized, if at all, I have no information on the subject.

Q. In running the Southern Pacific line from Mojave by way of Los Angeles to Fort Yuma as you proceeded easterly through the San Gorgonio Pass, and came into the desert, how did you locate the line there?

A. I intended to state clearly in a former answer, that there was a part of the road from near San Fernando Station to some point designated near Indio that I had no connection with in this matter among my other duties.

Q. And did you locate any part of the line between Indio and the Colorado River, at or near Fort Yuma?

A. I did.

Q. What part?

A. All of the line between the vicinity of Indio and the Colorado River; I cannot remember the exact point without study.

Q. How did you locate the line through that part of the country with reference to any natural objects, so that a map could be made of the line correctly delineating it?

A. The line was located in the usual manner common to engineers locating a railroad, as has been described in my previous answers, and the natural objects, such as creeks, were located definitely where they crossed the line of the survey and their courses either sketched by the eye or actually surveyed according to their importance and local topography, such as projecting spurs and summits of buttes, and the like of that, were in some instances sketched in by estimated

distances where close at hand, and in some instances measured to, and in some instances the measurement was done by triangulation.

Q. Then if the townships were unsurveyed and section corners not given, I understand that you located it with reference to the natural objects, the places, rivers and streams?

A. Where the section corners were surveyed and found they were connected upon, where they were surveyed and not found, they were not connected upon, and where they evidently were not surveyed they were not connected upon.

Q. Is that the usual manner of making surveys in unsurveyed country?

A. It is, so far as I know.

Mr. Call—I will ask you, Mr. Hood, to produce before the Special Examiner, the map of the Southern Pacific road, showing the definite location from a point near Indio to the Colorado River. I do not expect to put it in evidence, but I want to refer to it.

(Witness produces map.)

Q. Referring to the Southern Pacific map of location, known as Exhibit 63, state whether the section lines delineated upon that map were surveyed by the Government at the time the survey was made?

(Same objection.)

A. I do not know.

Q. Was it usual, in making maps of survey, or having them made, to project section lines or township lines over the survey in anticipation of the survey by approximation?

A. To the best of my knowledge it was usual to project section lines between, and guided by those

which actually were found at considerable distances apart, in some rare instances.

Q. And in that way to approximate the location?

A. Necessarily to approximate the location.

Q. Can you tell me whether the section lines marked upon Exhibit 63 on the line of route between Indio and Yuma were located by the Southern Pacific engineers by approximation, or whether they were actual surveys?

A. Those that are marked as being a definite number of feet away from the line of the survey of the railroad, and in a certain definite direction, on said Exhibit 63, were definitely connected upon, but as I said in prior answers, I do not know specifically when any particular connection or connections so described was made.

Q. But suppose the distance is not given from the line of road to the section line or corner?

A. Where that distance is not given the section lines as shown are projected in the manner described in your question prior to this one.

Q. Upon not an actual exact location, but upon an approximation or supposition that they would be put where it would come?

(Question objected to by the defendants as not proper cross-examination.)

A. I will say that such projection is made by the usual methods of and with the usual accuracy of drafting work, to a scale, and it would be, where the section corners actually connected on, were not too far apart, nearly or quite as accurate as the Government survey itself.

Q. Is that the usual method of marking such railroad lines of route?

A. I can only say in answer to that question that it is the method that we have commonly employed; I do not know about the methods of other engineers in this particular.

Q. Then the lines indicated as projected or made in drafting the map are made in the office rather than in the field, where the distances are not given?

(Question objected to by the defendants as not proper cross-examination.)

A. They are, and the map shows clearly which sections were and which were not connected upon.

Q. By means of the figures noted upon the map in feet from the section corner to the line of route?

A. Yes, sir.

Q. Then, if the distances are not given, do you mean to say that the corners were not found?

A. I do.

Q. And that it was a projected line to approximate the supposed lines of survey which would be made when the country was surveyed?

A. It was a projected line in such cases to show the position of the section lines and corners as nearly as possible where the corners themselves were not found, and as I stated before, I know nothing about the date of the survey of the Government section lines.

Q. So far as you know, is that the usual way of locating railroad lines?

A. So far as I know, it is.

Q. Referring to Exhibit 63, in Township 10 South, Range 14 East, and 11 South, Range 14 East, would

the section lines delineated on that map show that the Government corners were found, or would it not?

A. It would show that the section corner between Section 24 and 25, and 35 and 36, Township 10 South, Range 13 East, San Bernardino Base and Meridian, was found and connected upon; it would show that the combined section and township corner between Section 36 of Township 10 South, Range 13 East, and Section 1 of Township 11 South, Range 13 East, and Section 31 of Township 10 South, Range 14 East, and Section 6 of Township 11 South, Range 14 East, all of San Bernardino Base and Meridian, was connected with the line of the Southern Pacific Railroad.

Q. And the corner found?

A. And the corner found.

Q. Do you know when that corner was found and the distances marked upon this map?

A. I do not know specifically as to this particular corner in the same manner as explained in former answers.

Q. Do you know when this map was made?

A. I do not know the date which this map referred to in the question was made, excepting that it must have been at some time prior to the 8th day of November, 1877, as indicated by the certificates thereon.

Q. When was it adopted by the Board of Directors of the company?

A. In this matter the only information that I have is that contained in the certificate on the map referred to, which states, over the signature of the President of the Southern Pacific Railroad Company, that the loca-

tion of the road as represented on this map is correct and approved by the company, and the date of the Chief Engineer's certificate before Notary Charles T. Torbert, was November 8th, 1877; I have no other information than the map.

Q. Referring to Exhibit No. 63, showing the map of the Southern Pacific Railroad through Township 16 South, Range 20 East, and Township 16 South, Range 21 East, state whether the section lines projected over the ground as shown by such map, are intended to indicate actual surveys where corners were found, or whether they were made there to approximately show the location of the sections according to the idea of the surveyors or the maker of the map?

A. A portion of the section corners as shown by the measurements thereto on the map, were connected upon on the ground and a portion of them were not so connected; and this is indicated on the map by the lack of measurement to said section corners, and those which were not found were drawn in between those that were found.

Q. Taking Township 16 South, Range 20 East, San Bernardino Base and Meridian, what section corners were found and what were not?

A. There were two section corners found and connected upon, said section corners being on the north-easterly township line of said township, and being between Sections 1 and 2, and 2 and 3, respectively, of said township.

Q. Were any other section corners found in that township?

A. There were no other section corners found in Township 16 South, Range 20 East, San Bernardino Base and Meridian.

Q. Then you would say that all the other section lines marked upon that map were done in the office of the map maker by approximation?

A. I would say that the one other section line in that township which is shown by the map at all, namely, the township line between Township 16 South, Range 20 East, and Township 16 South, Range 21 East, were drawn upon the map in the position it should occupy in reference to that of the section corners that were found by the usual drafting methods, to a scale.

Q. What section corners were found as appears from the map in Township Fifteen South, Range 20 East?

A. The following section corners were found and connected upon as indicated by the map of which Exhibit 63 is made in the township referred to in the question, namely, the section corner at the northeast corner of Section 18, the northeast corner of Section 20, at the southwest corner of Section 21, at the northeast corner of Section 29, at the northeast corner of Section 34, at the southwest corner of Section 35, and at the southeast corner of Section 35; these last two section corners being upon the township line.

Q. Do you know whether those connections were made at the time the survey of the road was made or not?

A. I do not know in detail how many of them were made at the time, and how many of them were made at a subsequent time.

Q. But you would say they had been made in some form at the time the map was made?

A. There is no question but what they had been made correctly at the time the map was made.

Q. State what this line is on this map running across Township 15 South, Range 20 East, and 16 South, 20 East?

A. The line referred to, which is indicated on the map as being about one-eighth of an inch wide of light India ink, or other shading, and enclosed on either side by dotted pen lines, indicates the wagon trail or ancient road through that locality.

Q. Referring to Exhibit 63, showing the line of the Southern Pacific Railroad in Township 11 South, Range 15 East, San Bernardino Base and Meridian, state what section corners were found there and what Government lines, and what are projected by approximation?

A. There are no section corners shown as connected upon, and all are shown as projecting from other corners found in other townships.

Q. What natural objects did you take to show the location of the line of road through those townships?

A. We indicated the line of the road on the ground in the usual manner by stakes, and showed such mesas or creeks, or dry washes, or arroyas, or such object as existed.

Q. Is that the usual way of making such surveys under those circumstances?

A. It is, so far as I know.

Q. And all those sections that are marked there in section lines, you say were projected by approximation?

Mr. Redding—Q. This is all down in San Diego county?

A. Yes, sir; all those sections and section lines in Township 11 South, Range 15 East, San Bernardino Base and Meridian, in San Diego county, were projected upon the map from section corners actually found either side of said township, and for the reason that no section corners could be found upon the ground, I have no knowledge of them.

Mr. Call—Q. Was the line of the railroad actually located upon the ground?

A. Yes, sir.

Q. With stakes?

A. With stakes.

Q. How far apart?

A. The practice varies; on some parts of this line of survey the stakes were 100 feet apart, and undoubtedly this was the case through the township in question; where the ground was rougher they are frequently about 50 feet apart, in some places oftener.

Q. Suppose that the Government surveys were made over those townships and the section corners and lines correctly shown upon the ground, and it should be found that they were incorrectly delineated or marked upon that map, which would you say was the correct line of the railroad where—as shown by the natural features or as shown by the Government survey as eventually made?

A. I would say that the correct line of railroad would be identified by its stakes most accurately on account of the fact that that would be more certain than the natural features, which

might be erroneously placed; and also I would say that it has been our experience that our projected section lines, which are carefully projected from other corners not very far distant and actually found, have proved in my experience to be very nearly right, they are never out materially at all.

Q. Suppose that the railroad stakes were not found and the section lines were incorrectly marked, how would you locate the line upon the map or upon the ground. I am assuming that some of the points were correctly located on the map?

A. If at some subsequent time, the section corners had been surveyed I would locate the line with the most certainty from them; it simply is the result of my experience that they would come practically where shown on our maps.

Q. Then if your line in this township has delineated a certain stream which you crossed at a certain place, you would leave that natural object and go by the section lines which were projected, would you?

A. I would not be required to do so on any maps that I have experience with, of our making; I have never known any such case to occur.

Q. I am asking the question as to which you would do in that case, in endeavoring to replace the line?

A. I would naturally test the position of the line as built by any such section corners or section lines as might then exist.

Q. Suppose none were found and none existed at the time the line was located?

Mr. Redding—And no township or range line either, do you mean, Mr. Call?

Mr. Call—I leave the question as I put it.

A. I would then locate the line carefully and accurately in reference to such section corners as did exist on either side of the point in question, and as had been connected upon, and then by means of the true bearings of the lines in reference to the compass, the north pole, I would retrace the line by that method without fail, and it would bring the line essentially at the most within a foot or two of where it was originally located; I would not pay any attention to natural objects where I had a definite means of retracing, as would be the case where section lines and corners had been connected on either side of the place where they had not been connected on.

Q. Suppose that there was a variance between the projected section lines of Government surveys, and the natural objects delineated upon your map, would you first endeavor to ascertain where the stakes were put?

A. I would by all means first endeavor to find such stakes in and above the ground—and I have previously stated some were put under the ground and some above—as could possibly be found by a diligent search as pertained to the original location of the surveys of the road, and if I could find even one of them, I could replace the line of survey of the road exactly as it was on the ground originally.

Q. Do you, or do you not know, that Township 11, South, Range 15 West, has been surveyed by the United States subsequent to the time that this map was made?

(Same objection, and as not the best evidence.)

A. I do not know whether it has or has not.

Mr. Call—It is submitted that evidence as to when the survey was made might be competent. As to what the survey showed, probably the best evidence would be the map itself.

Mr. Redding—I suppose, Mr. Call, we can easily procure the necessary certificates from the United States Land Office, showing when this particular territory in San Diego county was surveyed, as also that two or three hundred miles north which we were discussing this morning, up to Soledad Canyon.

Mr. Call—Taking this township, which you say was unsurveyed when the map was made, 11 South, Range 15 East—

A. (interrupting)—I did not say anything of the kind.

Q. You said you did not find the corners.

A. That is right.

Q. Taking this Township 11 South, Range 15 East, in which the corners and lines were not found, suppose that I show you that the United States has surveyed that township since this map was made, and that this line of railroad which is delineated upon your map as running through Section 27, in fact runs through Section 34, as shown by the Government survey, which would you say was correct—your map or the Government map?

(Question objected to by Mr. Redding as being a hypothetical question, and having nothing whatever to do with the facts in the case, calling for the opinion of the witness upon matters extrinsic to the record, and immaterial and irrelevant.)

A. I could only say that the map indicates that the section corners in the township referred to were not found, and it does not in any way indicate whether or not the section lines were or were not surveyed at the time of the railroad survey.

Q. Assuming that they were not surveyed, and it would appear from the Government survey that the railroad now ran through the sections referred to, and not through the sections delineated upon this map, which would you say was the correct location of the line of road?

(Same objection.)

A. I should say that the correct location of the line of the road would be—assuming that it was not built at the time the question arose—as retraced from the nearest Government survey connections between the line of the road and the Government survey that existed in the manner heretofore described.

(Question repeated: Assuming that they were not surveyed, and it would appear from the Government survey that the railroad now ran through the sections referred to, and not through the sections delineated upon this map, which would you say was the correct location of the line of road?)

(Same objection.)

A. I would say that such a hypothesis was entirely impossible in connection with a map made in the manner that the present map was made.

Mr. Call—I will repeat the question. I would like to have an answer to the question upon the hypothesis which I have put: Assuming that they were not surveyed, and it would appear from the Gov-

overnment survey that the railroad now ran through the sections referred to, and not through the sections delineated upon this map, which would you say was the correct location of the line of road?

(Same objection.)

A. If any further answer is required than I have already given to this question, I shall be obliged to devote thought to the subject.

(A recess was then taken by consent of counsel until 2:15 p. m.)

San Francisco, September 25, 1893, 2:15 p. m.

CROSS-EXAMINATION OF WILLIAM HOOD.

(Resumed.)

Mr. Call—I will repeat the question put to you last before recess: Assuming that they were not surveyed, and it would appear from the Government survey that the railroad now ran through the sections referred to, and not through the sections delineated upon this map, which would you say was the correct location of the line of road?

(Same objection.)

A. I should say, with any instrumental field work of the class that I am accustomed to, that the map of the surveyed line of the railroad, and the section lines shown thereon, would be taken as correct by us, and that the Southern Pacific Railroad in fact passed through the sections of Government surveys as shown on the map of the Southern Pacific Railroad.

Q. What officer of the Southern Pacific Railroad Company directed you to locate the lines of the

Atlantic and Pacific Railroad, which you testified to as having recently made?

A. Really I do not remember accurately who it was; to the best of my remembrance, the order came either from C. P. Huntington or Charles F. Crocker, or H. E. Huntington.

Q. What time was this order given?

A. Some time in the year 1893, I think in April or May of that year.

Q. What were your instructions?

A. My instructions were in general to find the points on the ground in certain parts of Soledad Canyon, and opposite certain parts of Soledad Canyon, where, or on which, or at which, the alleged survey of the Atlantic and Pacific Railroad was as shown on Exhibit No. 54; and you understand me that the term Exhibit 54 was not then used, but I now use it for reference.

Q. To a map?

A. Yes, sir; and then to obtain the elevations of those points and make a true profile thereof.

Q. Were those instructions verbal or in writing?

A. I think that I received a general instruction from Mr. C. P. Huntington in writing, but I am not positive; it may have been from some one in his office, but that would amount to the same thing.

Q. Where were you at the time?

A. In San Francisco.

Q. Where was Mr. Huntington then?

A. Mr. Huntington was probably in New York—having it clearly understood that I am not claiming absolute accuracy for these answers.

Mr. Redding—Q. You mean as to that particular party?

A. I am not claiming absolute accuracy as to the answer that C. P. Huntington was in New York; for instance, he may have been at his country seat, he may have been anywhere else, but he was not here.

Mr. Call—Q. What is your best recollection as to whether your instructions were verbal or in writing?

A. I recollect having some instructions from the New York office, which term would cover C. P. Huntington and some of his assistant force there, in writing; I think I had such instructions, and I had some verbal conversations and talk, and authorization of the incurring of the expenditure for such surveys, with, to the best of my remembrance, Charles F. Crocker and H. E. Huntington, both of whom were here.

Q. Could you produce before the Special Examiner the instructions which you had in writing?

A. I can undoubtedly produce the instructions that I had in writing if I had such instructions, which I believe to have been the case, but I am not positive.

Mr. Call—I request you to produce the instructions referred to before the Special Examiner.

The Witness—if I can I will do so.

Q. Were your instructions to locate the line as delineated upon the Exhibit 54, as shown by the projected township line, or was it to locate the line by reference to the natural objects delineated upon the map?

A. I do not remember clearly on that point, but I do remember of getting the idea from the instructions

that I was to locate the line of the alleged survey of the Atlantic & Pacific upon the ground, as shown on their filed map of definite location.

Q. Where did you commence the survey, and at what time?

A. The survey was made, to the best of my remembrance, in a part of May and June, possibly some of July, but of that I am not certain, of 1893.

Q. Where did you commence the work of making the survey?

A. The work was commenced at the easterly end of the country shown on the profiles of Defendants' Exhibit before the Special Examiner, No. 56.

Q. At what point is that on Exhibit 54?

A. That is on the north and south line, between Sections 1 and 2, and 35 and 36 of Township 5 North, Range 12 West, San Bernardino Base and Meridian.

Q. You commenced there to run the line, did you?

A. To the best of my remembrance, commenced there or thereabouts.

Q. Did you start out in making this survey to ascertain the location of the Atlantic & Pacific Railroad upon the ground, where it was in fact made upon the ground, or was it your purpose to ascertain it with reference to the projected line of townships as contained on Exhibit 54, and not with reference to the natural objects?

A. With reference to the fact of the alleged survey of the Atlantic & Pacific Railroad, where it might or might not be located upon the ground, we had only one source of information, that source being the filed map of alleged definite location, a certified copy of

which is known in this case as Defendants' Exhibit before the Special Examiner, No. 54.

Q. Then do I understand you to say that what you started out to ascertain was where, in fact, the Atlantic & Pacific located its line?

A. What we started out to find was where, in fact, on the ground the alleged definite location of the Atlantic & Pacific Railroad was, as delineated and certified to on Exhibit No. 54, in reference to the township lines as shown on that exhibit.

Q. Did you take into consideration, in endeavoring to make that location, the natural objects delineated on the map?

A. We took into consideration nothing whatever in endeavoring to place the line heretofore spoken of on the ground, excepting its relations to the township lines as shown on Exhibit No. 54.

Q. I understand you to say that where the distance is given from a corner to a line of railroad selected and surveyed, that that indicates that the section corner has been found, and where the distance is not given that that indicates that it was not found, but projected in making the map; did I understand you to say that?

A. You understood me to say that that was the case on the maps of the Southern Pacific Railroad Company.

Q. And did you not also say that that was the general practice so far as you were advised?

A. I said that that was our practice entirely.

Q. And the general practice?

A. I am not aware of having said that.

Q. I think you so stated?

A. I did not; and if so, we will see from the record.

Q. Before commencing to make a survey at the point you have mentioned, which appears to be several miles from the line of route of the Atlantic and Pacific Railroad as located, did you first endeavor to find the grade stakes of the Atlantic and Pacific Railroad, and what efforts in that respect did you make, and how?

A. We made no efforts to do anything but find the point on the earth's surface at which the alleged survey of the Atlantic and Pacific Railroad is shown to be, according to Special Examiner's Exhibit, No. 54.

Q. Did you observe, when you started in to locate this line of the Atlantic and Pacific Railroad, that there was a variance between the line of route as delineated by the natural objects mentioned on the maps and the projected lines of Government survey or township lines which are projected over the map?

A. I observed that the line of alleged survey of the Atlantic & Pacific Railroad as certified to as the line of definite locations in Exhibit 54, in some places went high up on the sides of lofty mountains.

Q. I repeat the question: Did you observe when you started in to locate this line of the Atlantic & Pacific Railroad that there was a variance between the line of route as delineated by the natural objects mentioned on the maps and projected lines of Government survey, or township lines which are projected over the map. I am referring to the map?

Mr. Redding—Do you mean Exhibit 54?

Mr. Call—I am referring to the map which was shown to him, which is Exhibit 54.

A. I do not understand the question.

Q. Why did you start in to survey the line at Section 1, in Township 5 North, 12 West?

A. Simply as a matter of convenience, and because it was not intended to make a resurvey of the entire alleged survey of the Atlantic & Pacific Railroad as shown on Exhibit No. 54, but only of a certain part of it, and therefore we had to commence at some point.

Q. There is marked upon the map of the Atlantic & Pacific Railroad the place called Soledad, which you have described as being a cluster of buildings; why did you not start your survey at some known place indicated upon the map as being upon the line of route?

A. Simply because it was desired to find the relation of the alleged survey of the Atlantic & Pacific Railroad as shown upon Exhibit No. 54, to the township lines of the Government subdivisions, as those lines of public surveys were specifically referred to in the certificate on said exhibit as being something by which the line of alleged survey could be definitely established, and there was no reference that I have noticed to any topographical details of any description in the certificate on Exhibit 54.

Q. Did that certificate, in your judgment, refer to lines and corners projected, or was it made, or did it refer to those that were actually connected with by the survey?

A. I formed no judgment upon that subject; I simply took the certificate on Exhibit 54 for what it was worth.

Q. Did you find anything on Exhibit 54 which indicated to you where the Atlantic and Pacific line

crossed the easterly boundary of Township 5 North, Range 12 West?

A. I found nothing to indicate where the alleged survey, as shown on Exhibit No. 54, crossed the easterly line of Township 5 North, Range 12 West, excepting its position as graphically shown in reference to the township corners.

Q. How did you arrive at the result of starting at the points you did with reference to the distance from one corner of a township or the other?

A. Do you mean how did I arrive at the decision as to how far their line of alleged survey was from a township corner?

Q. Yes, that is what I mean.

A. That was done by taking the only information at hand, as Exhibit No. 54 is peculiarly devoid of numerals, and obtaining the distance graphically, in the same manner as is shown on Exhibit 54, which is also graphical, by the use of a particular scale.

Q. No figures having been given?

A. No figures having been given.

Q. Did you assume that that line was surveyed at the time the Atlantic & Pacific location was made—the east line of Township 5 North, Range 12 West?

A. I assume nothing, excepting as far as I assumed that a line of definite location of any railroad which claimed to be placed in reference to the township and other lines of the Government land surveys would be placed accurately in reference to them where the land was surveyed, and that being the case, it would be, to all intents and purposes, accurate in the shorter intervening spaces where the land had not been surveyed

by the United States Government at that time, as I have found it to be a very close and correct method, in my experience.

Q. And you say that unless the figures are given upon a map, that it is assumed that such corner is not found upon a line of survey?

(Question objected to by Mr. Redding as not proper cross-examination, and as being immaterial and irrelevant, from the fact that the map of the Atlantic & Pacific Railroad Company as filed, through this territory, and of which Exhibit 54 is a certified copy, and which is dated in 1872, shows upon its face that the township lines were there, and are so marked by the A. & P. people, with the numbers of the townships and the numbers of the ranges.)

A. I intended to say, and to convey, that that was the special and particular practice, to my own knowledge, of the mapping and surveying of the Southern Pacific Railroad, and of other railroads with which I have had connection, both the Southern and Central Pacific Railroads, and I should not make any assumptions about a map made by parties of whose practice I was entirely ignorant, and of whose work I had no control.

Q. You having examined the certificate of J. Blickersderfer, Jr., Chief Engineer of the Atlantic & Pacific Railroad, did you not observe that he stated that this certificate was made as shown by the field notes, and that was actually surveyed and marked upon the ground.

Mr. Redding—(interrupting) Let me interrupt you, Mr. Call. Please state which one of the two cer-

tificates you are now calling the witness' attention to. There are two certificates of J. Blickersderfer, one on the left-hand side of the exhibit, and one on the right hand side.

Mr. Call—I am speaking of the certificate referred to by the witness, which he says he took as his guide.

Mr. Redding—Answer which one that is.

A. I did observe that the certificate put forth in the exhibit mentioned, a reference to the line having been surveyed on the ground; if the words are required I would need to read it from the certificate.

Mr. Call—Q. And yet you say that in proceeding to locate the line you looked for no stakes or marks upon the ground, is that true?

A. I will call your attention to the fact—

Mr. Call—(interrupting). I wish an answer to the question directly.

Mr. Redding—I submit the witness can give his answer in his own language, Mr. Call.

Mr. Call—The answer is what I want to the question.

A. We looked for no stakes or marks upon the ground until arriving at the point on the ground where the alleged survey is shown to be on Exhibit No. 54.

Q. What efforts did you make then to find the stakes upon the ground?

A. There were no stakes found by a reasonable search; the country was grown up thickly with brush in many instances, and the alleged survey would have been twenty-one years old, if in existence at all, and highly improbable that any stakes would have been found standing of the nature used in such surveys.

Q. What was the character of the ground there at your starting point, where you started to make your surveys?

A. We obtained our level elevations in making the survey as to the height above the sea level with reference to the constructed line of the Southern Pacific Railroad.

Q. What was the character of the country as to its being rough, broken, or smooth and level there, at the point where you started?

A. Not very badly broken at the point occupied by the constructed Southern Pacific Railroad.

Q. But at the point where you started to make your survey, what was the character of the ground?

A. I see the questioner has not understood some of my previous answers. The first process in making the survey was to find the section corners, where they could be found, which was not universally the case, by measurements from the crossing of the section lines of the Southern Pacific Railroad, as shown on our maps, and as made from former surveys.

Q. Then the point you started at was on the line of the Southern Pacific, and in the Soledad Pass?

A. Yes, sir; in this instance it was on the line of the Southern Pacific Railroad, somewhat easterly from the summit of Soledad Pass.

Q. What was the altitude above the Southern Pacific Railroad nearest opposite in the pass? How much higher was the point where you started this survey than the Southern Pacific Railroad at its nearest point?

A. The altitude above the sea level on the Southern Pacific Railroad at the point where the survey

was started was, in round numbers, 3,060 feet above the sea level. The summit of Soledad Pass on the constructed line of the Southern Pacific Railroad is, in round numbers, at an altitude of 3,210 feet above the sea level.

Q. Where did you then proceed to survey?

A. Southerly along the north and south section line between Sections numbers 1 and 2, and following, and Nos. 35 and 36, Township 5 North, Range 12 West, to a point on the ground in reference to the township line occupied by the alleged survey of the Atlantic & Pacific Railroad as shown on Exhibit No. 54.

Q. Until you arrived at what point?

A. Until we arrived at the point on the ground where the alleged survey of the Atlantic & Pacific Railroad, as shown on Exhibit No. 54, should exist in crossing that north and south section line just described.

Q. Is there anything upon Exhibit 54 to indicate that the surveyors of the Atlantic & Pacific Railroad Company found that section corner which you went to?

A. Do you mean this particular section line?

Q. Yes.

A. There are nothing but township lines shown on Exhibit 54.

Q. Then there is nothing to indicate that this section corner was found?

A. Not on Exhibit 54.

Q. Did you consider that that was a point upon the Atlantic & Pacific line?

A. I did consider it a point on the line of alleged survey of the Atlantic & Pacific Railroad as shown on Exhibit No. 54.

Q. Did you observe on Exhibit 54 that the Atlantic & Pacific Railroad was marked as running in the Santa Clara River at the point opposite to this corner?

A. I now observe that the Exhibit No. 54 has a blue line marked "Santa Clara River" running essentially at the point mentioned.

Q. That is, that the line of route and river are substantially upon the same line?

A. As shown on Exhibit No. 54.

Q. Which way did you proceed to run your survey from that point? A. In general, westerly.

Q. Where did you locate your survey with reference to the town or place called Soledad?

A. The alleged survey of the Atlantic & Pacific Railroad as shown on Exhibit No. 54 was located on the ground as shown on said exhibit, where it is shown on said exhibit to cross the north and south line between Sections 3 and 4, and 9 and 10, and 15 and 16, Township 4 North, Range 12 West, San Bernardino Base and Meridian; and similarly the line of alleged survey of the Atlantic & Pacific Railroad as shown on Exhibit 54 was located on the ground in the position where said exhibit shows said line of alleged survey to cross each successive north and south section line and township line, and the elevations of said alleged survey were taken at these points upon the ground, including all intermediate elevations such as covered by your question.

Q. Where did your survey, then, in fact, cross the west line of Township 4 North, Range 12 West?

A. We surveyed the position of the alleged survey of the Atlantic & Pacific Railroad, as shown on Exhibit 54, crossing the north and south township line on the westerly boundary of Township 4 North, Range 12 West, at a point about two and a quarter miles south of the northwest corner of said township.

Q. How far were you then from the Santa Clara River?

A. We were about two and a quarter miles in a north and south direction, south of the Santa Clara River as it exists upon the ground, the earth's surface.

Q. Was that altitude above or below the Southern Pacific Railroad at Santa Clara River?

A. It was a very great distance above it vertically.

Q. Does not the Southern Pacific follow on in the river practically all the way down, or very close to it?

A. The Southern Pacific Railroad in Soledad Canyon, after getting to a point about five miles southwesterly from the summit of Soledad Pass, thence follows down the Santa Clara River, or Soledad Canyon, without being at any place more than thirty or forty feet vertically above the bed of the river or creek.

Q. How far—half a mile, or a quarter of a mile from the river?

A. It would generally be that distance or less.

Q. But most of the distance only a few feet?

A. Most of the distance it would be a hundred feet or less.

Q. At what elevation were you there above the river?

Mr. Redding—At what point do you mean?

Mr. Call—At the point indicated upon Mr. Hood's survey, which is indicated as being about two and a quarter miles south of the township corner, between four and five North, and Ranges 12 and 13 West?

A. About 360 feet above the river.

Q. Did you, or did you not find your survey to be an impracticable one for the construction of a railroad?

A. We did find that the alleged survey of the Atlantic & Pacific Railroad, as shown on Exhibit No. 54, and as retraced according to that exhibit on the earth's surface, in reference to its situation relative to township lines as shown on that exhibit, was entirely impracticable for the construction of a railroad.

Q. Did you not know that the line of definite location of the Atlantic & Pacific Railroad was shown upon the map of that company to run through the place called Soledad?

A. I know that there is a place called Soledad, marked on the alleged survey of the Atlantic & Pacific Railroad, as shown on Exhibit No. 54.

Q. I believe you testified that a certain amount of grading had been done down through the Soledad Canyon or Santa Clara River, which by general repute was understood to have done by the Atlantic & Pacific Railroad Company; now, knowing that fact, why did you not proceed to locate your line by that grading, which I believe you have said was still visible, and could be followed?

A. For the reason that I was attempting exclusively to locate the line of the alleged survey of the

Atlantic & Pacific Railroad, on the ground as it was shown in reference to the township lines on Exhibit No. 54.

Q. Did you consider those township lines marked there as being better evidence than the location, in fact in making your survey as to where you should run the line? A. I did.

Q. Do you state that as being your judgment without taking into consideration whether or not the Government surveys had been made in those townships at that time?

(Question objected to by Mr. Redding on the ground that the map of the Atlantic & Pacific Railroad Company, as filed in the Interior Department, of which Exhibit 54 is a certified copy, shows the township lines and range lines, and the location is made with reference to them, and therefore the question is immaterial and irrelevant.)

A. I do.

Q. Do you consider those projected township lines more authentic, as showing the location of the Atlantic & Pacific Railroad, than the Santa Clara River itself, which is delineated upon the map as being upon the same line as the line of definite location of the Atlantic & Pacific Railroad?

A. I do, for the reason that the township lines are specifically mentioned as a means of locating or identifying the alleged survey of the Atlantic & Pacific Railroad on the ground, and it is so mentioned in the certificate attached to the Exhibit No. 54.

Q. Did you make an examination, and if so, what examination, and the method of it, to ascertain if you

could find the grade stakes of the Atlantic & Pacific Railroad along and next to the Santa Clara River?

A. I did not.

Q. Then what you endeavored to locate was to locate where, in your determination, the Atlantic & Pacific Railroad line would run with reference to these projected township lines, and without reference to the river and the places mentioned on the map?

A. As I have said before, I located the alleged Atlantic & Pacific survey, as delineated on the Exhibit No. 54, and identified its position on the ground, by the only means that were certified to in said exhibit as being correct.

Q. Is your statement in that correct? Does not the certificate also say that the line was located upon the ground? Have you forgotten that?

A. I have not; there is ground all the way up to the top of the mountains.

Q. Did you take into consideration that part of the certificate showing that grade stakes were set, and if you took into consideration in making your survey the line as delineated and as shown of those grade stakes?

A. We had no knowledge of the existence of the fact of such grade stakes, and proceeded accordingly upon what knowledge we had, that knowledge being wholly the statement of the certificate on Exhibit No. 54 as to the position of the alleged survey of the Atlantic & Pacific Railroad; the statement that it was upon the ground carries no meaning with it whatever, excepting that it was somewhere on the earth's surface.

Q. But you ignored the location as being upon the Santa Clara River?

A. We paid attention only to the features that I have stated.

Q. Then have you not noticed that there is a divergence between the line as located by the Santa Clara River and as you have approximated it upon and according to Government lines?

A. I have noticed incidentally that certain parts of the Santa Clara River as shown upon Exhibit No. 54 corresponded closely to the alleged survey of the Atlantic & Pacific Railroad as shown on certain parts of Exhibit 54.

Q. And then did you notice that when you had run off your line by the township lines which had been projected over that map, that there was a divergence between such line and the line of the route as lying along the Santa Clara River?

A. I noticed that the line of the alleged survey as located on the ground by us according to the Exhibit No. 54, was in general not anywhere near the Santa Clara river as it exists on the earth's surface, and as to whether the township lines as mentioned in the question, as shown on Exhibit No. 54, were projected or not with or without data, I have no knowledge.

Q. To make a long story short, taking Exhibit 54, there is a place marked "Owens River Road," another stream or canyon marked "San Francisquito Pass," here is the Santa Clara River, lying up the Santa Clara River is marked "Atlantic & Pacific Railroad route, by way of the mouth of Soledad Pass," "by way of Soledad," "by way of Summit," "by way of Barrel Springs," all those points being named, and there is also projected over the map certain lines which

you take for township lines; now, in running your line of survey, is it not true that you ignored all those points, and all those places and lines, excepting the projected township lines?

(Question objected to by Mr. Redding as immaterial and irrelevant, in that the map of the alleged survey of the Atlantic and Pacific Railroad Company, a certified copy of which is introduced in this case as Exhibit No. 54, does not show that the township lines were projected over the map, but on the contrary, that the survey was made with reference to the township lines existing at the time, and the certificate of the engineer so states; therefore the question is irrelevant and immaterial.)

A. I took the certain lines mentioned on the map for township lines, because they are implied to be such in the certificate attached to Exhibit No. 54, and I located the alleged survey of the Atlantic and Pacific Railroad on the ground with reference to such township lines as being the only authorized monuments or means of identification as authorized in this certificate on Exhibit No. 54.

Q. Were those your instructions from the Southern Pacific Railroad Company to so locate it?

A. I have no clear remembrance of that detail.

Q. What is your recollection?

A. My recollection is that I was told to locate the line of alleged survey of the Atlantic and Pacific Railroad as shown on Exhibit No. 54 in reference to the township lines upon the earth's surface, and get a profile thereof showing the elevations and depressions.

Q. Which way did your survey then proceed in a general way?

A. Generally we worked westerly from the summit.

Q. How far did you go?

A. As far as the west township line of Township 4 North, Range 15 West, with instrumental surveys of the alleged survey of the Atlantic & Pacific Railroad as shown on Exhibit No. 54.

(An adjournment was then taken by consent of counsel until Tuesday, September 26th, 1893, at 10:30 A. M.)

[Endorsed]: Circuit Court of the United States, United States of America, Complainant, vs. Southern Pacific R. R. Co. et al., Defendants. No. 184. Report of Special Examiner. Vol. 1. Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

San Francisco, September 26th, 1893.

CROSS-EXAMINATION OF WILLIAM HOOD.

(Resumed.)

Mr. Call—Q. Before starting in to locate the line of the Atlantic and Pacific Railroad with reference to the projected township lines, which I believe you said was in May and June, 1893, with what officers of the Southern Pacific Railroad Company did you confer?

A. I remember clearly of conferring with Charles F. Crocker, who was the President of the Southern Pacific Railroad Company, with reference to doing this work and getting his authorization of making the necessary expenditures; this conference and authorization was verbal, as is very commonly the case in similar work.

Q. With whom else did you confer?

A. I have had some conversation, I think, on the matter with Mr. H. E. Huntington in the way of informing him of work in hand in general, which is my common custom.

Q. Did you confer with anyone else?

A. I have had considerable verbal conference on the subject with Mr. Jerome Madden, the head of the Southern Pacific Railroad Company's Land Department; to save further questions, I will add to that, that I do not remember of having conferred with any other officers of the Southern Pacific Company or the Southern Pacific Railroad Company, on the matter here in San Francisco.

Q. Did you confer with Mr. Payson of Washington in reference to this matter? A. I did not.

Q. Did you have any correspondence with him in reference to it? A. I did not.

Q. Did you have any conversation or correspondence with Mr. Tweed in reference to it?

A. I did not have any conversation or correspondence with Mr. Tweed in reference to it.

Q. Or with Mr. Ashton of Washington?

A. I did not.

Q. Were you aware at the time of making this survey that your testimony in reference thereto was to be taken in this case?

A. I had no information to that effect from any one that I remember of; in that sense I was not aware of it.

Q. Were you aware that a suit was depending in the United States Court between the United States

and the Southern Pacific Railroad Company involving the overlapping lands?

A. I had seen accounts of such a suit in the newspapers.

Mr. Redding—Mr. Call, you are seeking to impeach the testimony of the witness.

Mr. Call—Not unless something should be developed which would have that effect.

Mr. Redding—Then I object to the line of questions as immaterial and irrelevant. Mr. Hood has stated that he is Chief Engineer of the Southern Pacific Railroad Company, one of the defendants in this action. That statement surely covers all the questions that you have asked, unless you are seeking to impeach the veracity of the gentleman on the stand.

Mr. Call—Q. What data in the way of maps was furnished you when you started in to make this survey?

A. I had furnished me copies of what would be called in this case Exhibit No. 54, and also I had furnished me copies of portions of Exhibits Nos. 52, 53 and 57.

Q. Any other maps?

A. Also a copy of the portion of Exhibit No. 59, which included the ground in and adjacent to Soledad Canyon and Santa Clara River, and also a copy of the constructed profile of the Southern Pacific Railroad in the same limits of a part of Exhibit 59; I do not remember of any other things being furnished me of that nature.

Q. Did you have an exact copy of Exhibit 54, or did you have that particular exhibit?

A. Do you mean, did I have it to take in the field?

Q. For your use?

A. I did not have that particular exhibit; I had a copy of that exhibit.

Q. Was it an exact copy?

A. So far as I know.

Q. Did it contain the same certificates and endorsements?

A. It did, so far as I remember; whether the particular copy of Exhibit 54, that was actually taken into the field contained the copies of the certificates and endorsements or not, I am very uncertain; it would not have been necessary; I do not know.

Q. Did the copy which you had contain a certificate of the Commissioner of the General Land Office similar to Exhibit 54 in this case?

A. I think it did; my remembrance is that it was a copy, but I do not remember those details.

Q. Did the map which you had state in the certificate of the Commissioner that it was designated as a map of definite location or a map of preliminary route?

A. My remembrance is that it was a full copy of Exhibit No. 54, but I gave naturally more attention to the position of the alleged survey of the Atlantic & Pacific Railroad, as shown on that copy, than I did to any endorsements thereon at that particular time.

Q. Who furnished you these copies of maps?

A. I think the originals were loaned me out of Mr. Madden's office, and that the copies of them were made in my office; I am not positive as to that, but that is my general remembrance.

Q. Did you take note as to what those maps purported to be when you started in to make your survey? A. I did.

Q. Did you observe that Exhibit 53 was certified under the seal of the General Land Office to be a copy of a diagram showing the limits of the withdrawal for the Atlantic and Pacific Railroad Company from the western boundary of Los Angeles county, California, to Township 7 North, Range 7 East? A. I did.

Q. And for what purpose did you use it?

A. We used it as being a correct map, and on a larger scale, showing correctly the line of alleged survey of the Atlantic and Pacific Railroad, as shown on a smaller scale on Exhibit No. 54; and after comparing them carefully by the usual drafting methods the line of alleged survey of the Atlantic and Pacific Railroad was found to be substantially the same in reference to township lines and the interior subdivisions of township lines as Exhibit No. 54; that is, Exhibit 53 and Exhibit 54 were found to be substantially the same in the particulars above described.

Q. Observing as you did, that the map marked Exhibit 53, was certified by the Commissioner of the General Land Office to be a diagram showing the limits of the withdrawal for the Atlantic and Pacific Railroad Company, by what authority did you assume that that delineated correctly the Atlantic and Pacific Railroad line?

A. Because, as I before stated, after careful examination, the road line delineated on Exhibit No. 53 proved to correspond exactly in the situation in reference to township corners to the alleged line of survey

of the Atlantic and Pacific Railroad as delineated on Exhibit No. 54, and on Exhibit No. 54 the said line was specifically described as the line of definite location.

Q. Then you were controlled by Exhibit 54, rather than in reference to Exhibit 53?

A. We considered Exhibit No. 54 controlling as to the position of the alleged survey of the definite location of the Atlantic and Pacific Railroad as related to the township lines and the intermediate space between the township lines?

Q. Did you observe on Exhibit 53 that there was a variance between the line of route marked there of the Atlantic and Pacific Railroad Company to the Santa Clara River, that they did not coincide upon Exhibit 53, but that they did coincide upon Exhibit 54?

Mr. Redding—What do you mean by coincide, Mr. Call?

Mr. Call—Occupying the same practical line.

A. On Exhibit No. 53 as certified to by the Commissioner of the General Land Office of the Interior Department, there is no Santa Clara River shown at all; and upon Exhibit 54 there is a blue line shown marked "Santa Clara River."

Q. And the Atlantic and Pacific Railroad line practically following the line?

A. The Atlantic and Pacific Railroad line practically following the blue line which is marked "Santa Clara River" on Exhibit 54; that is the alleged line of the survey of the Atlantic and Pacific Railroad as shown on Exhibit 54, practically follows the blue line marked "Santa Clara River."

Q. Did you in starting in upon your survey to locate the Atlantic and Pacific line with reference to township lines projected over Map 54, have for your guidance and use the field notes of the Atlantic and Pacific Railroad Company referred to in the certificate of the chief engineer of the Atlantic and Pacific Railroad Company as shown upon Exhibit 54?

(Question objected to by Mr. Redding on the ground that the question is misleading in that the counsel uses the words "township lines projected over Map 54," when the map itself certifies that the survey was made in reference to the public surveys at that time existing; and therefore the question is immaterial, irrelevant and incompetent.)

A. I did not have any field notes on the survey of the Atlantic and Pacific Railroad.

Q. Did you have any field notes at any time during the making of that survey of the Atlantic and Pacific Railroad Company?

A. I had what is stated by their chief engineer in his certificate, as shown on Exhibit No. 54, as a graphical delineation of such field notes.

Q. I am asking you if you had at any time any field notes? A. I did not.

Q. Did you make any effort to obtain those field notes from the Company? A. I did not.

Q. Have you ever seen Barrel Springs?

A. I have.

Q. What does that place consist of?

A. It consists of to the best of my remembrance, an adobe house. I forget whether there is a stable, and there is a spring there of a considerable magni-

tude which formed a kind of a hole or pool before running to waste.

Q. Do you know where Barrel Springs is located?

A. Barrel Springs is located on the ground with reference to the United States surveys in Section No. 7, Township 5 North, Range 11 West, San Bernardino Base and Meridian.

Q. Is there a public road running by Barrel Springs?

A. There is a road or wagon track running by Barrel Springs.

Q. Do you know whether or not that is the road known as the Old Fort Tejon and San Diego Road?

A. As I remember it, the Old Fort Tejon road diverges and swings up to Barrel Springs, and the road from Soledad Canyon comes over to Barrel Springs, and as I remember it, there is a road from the vicinity of Alpine Station on the constructed Southern Pacific Railroad to Barrel Springs.

Q. Then Barrel Springs are considerable of a landmark in that portion of the country?

A. Barrel Springs are distinctly visible on the surface of the earth.

Q. I believe you stated that you were familiar with the place called Soledad? A. I did.

Q. Do you know where the San Francisquito Pass or Canyon opens into the Santa Clara River?

A. I do.

Q. How long have you known that point?

A. Very many years.

Q. At that point where the San Francisquito Pass opens into the Santa Clara River, how far from that

point did you locate your survey of the Atlantic and Pacific Railroad which you made with reference to the projected township lines upon map 54?

(Same objection in reference to the word "projected".)

A. We did not locate instrumentally the line of alleged survey of the Atlantic and Pacific Railroad as shown on Exhibit No. 54, at a point as far to the west as the mouth of the San Francisquito Pass or Creek.

Q. Then you did not attempt to survey the A. & P. line west of that point? A. We did not.

Q. Did you attempt to locate the Atlantic and Pacific line mentioned east of Range 12, San Bernardino Base and Meridian?

A. I did not attempt to locate the alleged survey of the Atlantic and Pacific Railroad as shown on Exhibit 54 on the earth's surface, east of the point named.

Q. Do you know where the place is that is marked upon the exhibits, "mouth of Soledad Pass"?

A. That is not a definite point, so far as I know, on the earth's surface, and might be taken some distance apart by two different men; I do not know what the mouth of the Soledad Pass means.

Q. Why did you not endeavor to locate the Atlantic and Pacific line as mentioned at a point where the San Francisquito Pass or Cañon opens into the Santa Clara River?

A. For the same reason that I did not try to locate the line of alleged survey of the Atlantic and Pacific Railroad, as shown on Exhibit 54, throughout its entire length.

Q. What was the reason?

A. Because I had a particular interest in seeing what sort of ground the alleged survey of the Atlantic

and Pacific went over between the points where I did locate it upon the ground.

Q. Is not the real reason why you did not attempt to locate the line there, because the line indicated upon Exhibit 54, with reference to the projected township lines, exactly coincided with the line run with reference to the Santa Clara River?

A. It was not for any such reason.

Q. What do you say was the reason?

A. I have already stated that it was because I had a particular interest in the part of the alleged survey of the Atlantic and Pacific Railroad as shown on Exhibit 54, that I did run, and also because I found that it would be impossible to connect a railroad on the alleged survey of the Atlantic and Pacific Railroad as shown on Exhibit 54, lying easterly of the west line of Range 15 West, with a line of railroad constructed upon a line of the alleged survey of the Atlantic and Pacific Railroad, as shown on Exhibit 54, lying to the westerly of the westerly line of Range 15 West, with any practicable grade system.

Q. Were you informed from the Government map, or otherwise, as to what portion of Township 4 North, Range 16 West, at the place marked the junction of the Santa Clara River with San Francisquito Pass, was surveyed in 1872.

(Question objected to by Mr. Redding as immaterial and irrelevant, for the reason that the maps of the Atlantic and Pacific Railroad, introduced by the Government in this case by certified copies, show that the townships were surveyed in 1872, and upon which surveys the Government relies to evidence the location

of the alleged surveyed route of the Atlantic and Pacific Railroad Company.)

A. I do not remember of having had any specific information as to what Government land was surveyed or not surveyed.

Q. Did you consider, in making the survey of the Atlantic and Pacific line, with reference to the projected township lines on Exhibit 54, that the map referred to by you, which is Exhibit 53, was authentic and reliable for the purpose of showing the Government surveys and lines?

(Question objected to by Mr. Redding as to the use of the words "projected survey on Exhibit 54," on the ground that Exhibit 54 contains a certificate thereon by the officers of the Atlantic and Pacific Railroad Company that the surveyed route of the Atlantic and Pacific Railroad Company was made in reference to the United States surveys then existing, and not thereafter projected.)

A. I considered the Exhibit 53 to be authentic and reliable, as showing the township lines in their relation to the alleged survey of the Atlantic and Pacific Railroad, because I had carefully compared it in these particulars with Exhibit No. 54.

Q. Did you find that the section lines delineated upon Exhibit 53 were correctly shown with reference to the public surveys?

A. I do not understand you.

Q. Did you find this map was correct or did you not?

Mr. Redding—What do you mean by correct?

Mr. Call—That it correctly shows the Government lines.

(Question objected to by Mr. Redding as incompetent; the map speaks for itself, bearing the certificate of the Interior Department, and the witness has testified that the projection of the Atlantic and Pacific alleged survey on Exhibit 53, proceeds with reference to the public surveys thereon marked exactly in the same manner as it does on Exhibit 54, only on a larger scale; the witness' testimony certainly cannot be competent to testify as to the correctness of maps bearing a certificate from the Interior Department.)

Mr. Call—I object to the objection as being made for the purpose of suggesting to the witness his answer, and upon that ground I move to exclude the testimony of this witness.

A. I do not know, without further light on the subject, in what sense, and in what manner, and to what degree of detail, I am expected to criticise or approve the correctness of Exhibit No. 53.

Q. To what extent did you find, in point of fact, that the map marked Exhibit 53 was correct or incorrect?

(Same objection.)

A. I found it correct to this extent, that its delineation of the position of the alleged survey of the Atlantic and Pacific Railroad, with reference to the township lines, corresponded and was correct in all particulars, excepting as to scale, with the corresponding portion of Exhibit No. 54 in the same particulars; I made no examination of Exhibit 53 to test its detailed correctness in other respects.

Q. Did you assume from that map that the lines of the public surveys were correctly delineated thereon?

(Same objection.)

A. If you mean that I assumed that all townships shown on Exhibit No. 53, which showed the section lines, and the lines subdividing the sections into 40 acre tracts, were correct in the sense that such section lines and such subdivision of section lines had been all surveyed and staked upon the ground by United States Government Surveyors, I did not make any such assumption.

Q. Then you did not assume that the townships and section lines delineated on 53 had been surveyed as indicated on such map?

(Same objection.)

A. I did not assume that all of them had been surveyed upon the ground as delineated on said map.

Q. And you did assume that some of them were projected over the map, and not upon an actual survey?

(Same objection.)

A. I assumed the township section lines to exist upon the ground where they were found, and where they were not found I made no assumption in reference to them.

Q. Did you know in fact that Township 4 North, Range 16 West, which is delineated upon map 53 as having been surveyed and subdivided, was not in fact surveyed and subdivided, but embraced within the Rancho San Francisco?

(Same objection.)

A. I think I may have known it, and I believe it to be the case, and in the surveys that we made of the position upon the ground of the alleged survey of the Atlantic and Pacific Railroad, as shown on Exhibit

No. 54, as I have previously stated, these surveys did not go further west than the westerly line of Township No. 4 North, Range 15 West, San Bernardino Base and Meridian.

Q. Did you know, in point of fact, that the Townships 5 North, 12 West, 4 North, 12 West, 4 North, 13 West, 4 North, 14 West, and 4 North, 15 West, were almost wholly unsurveyed at the time Exhibit 53 was made?

(Question objected to by Mr Redding as incompetent, immaterial and irrelevant; incompetent, that the testimony of the witness is not the best evidence; immaterial and irrelevant from the fact that the alleged surveyed line of the Atlantic and Pacific Railroad Company, as indicated on the exhibits introduced by the Government in this case, namely, Examiner's Exhibit, No. 10, or the equivalent thereof, Master's Exhibit 127, in Case 68, or the equivalent thereof, Defendants' Exhibit before the Special Examiner, No. 54, all allege and state upon their face, that the said survey was made with reference to the Government surveys then existing, and that, therefore, the Government is bound thereby.)

A. Whatever I might know incidentally of the state of the United States Government land surveys at any particular time, I have no such exact knowledge of the times at which such United States Government land surveys were made as would warrant me in giving any definite testimony in reference to the matter.

Q. Did you assume for the purposes of locating the Atlantic & Pacific Railroad line by the projected township lines shown upon Exhibit 54, that those

townships were surveyed at the time that Exhibit 53 was made?

(Same objection, and the further objection that the question is misleading, in that the counsel uses the word "projected," when the exhibits of the Government and the maps of the Atlantic and Pacific Railroad show that the surveys were made with reference to the public surveys as they existed, and not as thereafter projected.)

A. I made no assumptions of any description.

Q. Do you know that in running Government surveys, the Government runs what are known as correction lines, in which there is a variance from the previous survey, and do you know how often these correction lines are run?

(Same objection, and the further objection that the witness' testimony is incompetent on this point and not the best evidence, and calling for the opinion of the witness on irrelevant matter, and irrelevant and hearsay.)

A. I have never made any United States Government surveys for subdividing Government land, and cannot testify on this matter except as any one else could from common report and general knowledge upon the subject.

Q. What is the extent of your information in regard to running corrected lines on Government surveys?

(Same objection).

A. I understand that lines known as, I believe, "standard parallels," are run, and I believe they extend east and west, and that they are run once in

thirty miles northerly from the base and meridian; I have had no experience in making such surveys.

Q. I call your attention to Exhibit 54, and to a line marked "First standard north," as shown thereon, by which it appears that a correction line has been allowed for upon the map by which there is a variance of some two miles; I ask you if you observe that?

(Same objections, and the further objection that the alleged surveyed line of the Atlantic and Pacific Railroad Company is made with the corrected standards existing on the map as of that time, and consequently the witness' testimony is incompetent, immaterial and irrelevant.)

A. I see a line marked "First standard north," on Exhibit 54, and I know nothing more about the corrections referred to than is shown on said Exhibit 54, and have no knowledge of it other than from said exhibit.

Q. Did you observe that there were no such variations allowed for, or correction lines, on Exhibit 53, at the time of making your survey?

(Same objection.)

A. I observed that there was no first standard parallel north, marked on Exhibit 53, but I observed that in delineating the line of alleged survey of the Atlantic & Pacific Railroad on Exhibit No. 53, that where said line of alleged survey crosses the northerly boundary of Township 5 North, an allowance was made for the existence of such standard parallel which runs upon said township line, according to Exhibit 54, by means of making a break of apparently a mile, more or less, in the red line which indicates the

alleged survey of the Atlantic & Pacific Railroad on Exhibit No. 53, correctly corresponding, as I have heretofore testified, to the line of alleged survey of the Atlantic & Pacific Railroad on Exhibit 54; this would make Exhibit No. 53 correct for all practical purposes in the particulars named.

Q. Then you observed that Townships from 11 to 16 West, as shown on Exhibit 53, coincided with each other as to their north and south lines where passing the first standard north, and that on Exhibit 54 they do not coincide?

(Same objection.)

A. I now observe that the exhibits are as stated, although "First standard north" is not specifically so lettered or labeled on Exhibit 53.

Q. State which one of those maps you consider the most authentic in reference to the location of those townships referred to, namely Townships from 11 to 16 West, inclusive.

(Same objection.)

A. Do you mean north and south of the parallel?

Q. Yes.

(Same objection.)

A. The Exhibit No. 54 I should judge to be, but I have no information as to the authenticity of either exhibit more than is conveyed upon the certificates thereto attached.

Q. Do you know where the San Fernando Rancho is located in Los Angeles County?

(Same objection.)

A. I have a general knowledge of the location of the rancho, which I think is called Rancho Ex-Mission San Fernando, but I am not positive.

Q. Comprising several hundred thousand acres?

(Same objection.)

A. Comprising a large number of acres.

Q. Did you observe that on Exhibit 53 the lines of the Government survey were extended over that rancho as if it had been surveyed?

(Same objection.)

A. I now inspect Exhibit No. 53, and do not see any indication of the San Fernando or Ex-Mission San Fernando, as the case may be, rancho.

Q. Do not all those facts indicate to you that Exhibit 53 was designed solely for the purpose of withdrawing certain lands for the Atlantic & Pacific Railroad, and not for the purpose of definitely locating any line of route?

(Same objection, and the further objection that if, as the counsel for the Government suggests, Exhibit 53 was for the purpose of withdrawing lands for the Atlantic & Pacific Railroad Company, it surely would show what lands are accepted from the grant by the existence of a former grant; therefore the question is incompetent, immaterial and irrelevant.)

A. I have no opinion to offer as to what is indicated in this particular, and my previous testimony as to the line of alleged survey of the Atlantic & Pacific Railroad, as shown on Exhibit 53, has been wholly to the effect that it corresponded in all particulars excepting as to scale with the line of the same alleged survey as shown on Exhibit No. 54, and those are the only points in reference to Exhibits 53 and 54 that I have taken very much interest in.

Q. And excepting as to the allowance for the Government correction line referred to?

(Same objection.)

A. Not excepting that as referring to the accuracy of the delineation of the alleged line of survey of the Atlantic & Pacific Railroad on Exhibit No. 54, in or upon any part of Exhibit 54, in reference to which I have particularly testified.

(A recess was then taken by consent of counsel until 2:30 p. m.)

San Francisco, Tuesday, Sept. 26, 1893, 2:30 p. m.

CROSS-EXAMINATION OF WILLIAM HOOD.

(Resumed.)

Mr. Call—Q. When you were making your survey to locate the Atlantic & Pacific Railroad line according to the projected lines of townships as shown on Exhibit 54, you being aware that that map was certified to be a map of the preliminary route of the Atlantic & Pacific Railroad only, how did it happen that you endeavored to find the grade stakes of the Atlantic & Pacific Railroad?

(Question objected to by Mr. Redding for the reasons heretofore stated, and the further reason that there is a misstatement of the counsel, of course unintentionally, in saying that the certificate calls this a preliminary route. The certificate reads that the map is "A true and literal exemplification of the one filed in the department, of March 8th, by the attorney for the Atlantic & Pacific Railroad Company, and transmitted to this office by departmental letter dated March 9, 1872," and described therein as a map "show-

ing the preliminary location of the line of said railroad from a point on the westerly boundary line of Los Angeles county, California, to a point in Township 7 North, Range 7 East, San Bernardino Base and Meridian." The certificate does not state that this map on its face says that it is a map of preliminary route, but the certificate recites a letter, wherein the certificate says the letter describes the map as showing the preliminary location.)

Mr. Call—I ask you, then, for what purpose you offered the map—as a map of preliminary route, or as a map of definite location?

Mr. Redding—I offered the map as being a certified copy of the one filed in the Interior Department by the Atlantic & Pacific Railroad Company on the date named, and as being the same map as introduced in Case 68 as Master's Exhibit 127, and by substitution introduced by the Government, in the case at bar as Examiner's Exhibit No. 10.

A. Do you mean grade stakes, or survey stakes? There is a difference in the meaning?

Mr. Call—I said grade stakes.

The Witness—You meant the stakes of the survey, did you not?

Mr. Call—No, I was referring to the grade stakes.

A. I considered the affidavit of the chief engineer of the Atlantic & Pacific Railroad as shown on Exhibit No. 54 to be the best evidence, and that the most accurate use of terms as to the character as viewed by said chief engineer of the line of alleged survey of the Atlantic & Pacific Railroad as shown on Exhibit

No. 54, and of the character of the delineation of the township lines, would be found in his affidavit, which is upon said Exhibit No. 54.

Mr. Call—Q. Then, did you treat the map as a map of definite location, or as a map of preliminary route, from the endorsements and certificates and affidavits thereon?

A. I treated the map as a map of definite location, as stated in the affidavit on Exhibit No. 54, before mentioned.

Q. Did you look for any of the survey stakes of the Atlantic & Pacific Railroad Company at a place marked Cottonwood Station on the Mojave River, as shown on Exhibit 54? A. I did not.

Q. Did you look for any survey stakes of the Atlantic & Pacific Railroad at a place marked Barrel Springs on Exhibit 54? A. I did not.

Q. Did you look for any survey stakes of the Atlantic & Pacific Railroad at the place known as Barrel Springs? A. I answered that I did not.

Mr. Redding—You mean, Mr. Call, Barrel Springs, as exists on Exhibit 54?

Mr. Call—Q. The place known as Barrel Springs, being the place which you have referred to as being well acquainted with and as being a landmark?

A. I did not.

Q. Did you look for any stakes of the Atlantic & Pacific Railroad along or immediately adjacent to the Santa Clara River?

A. We made some search for survey stakes at the various points that I have previously mentioned in this testimony on the earth's surface, where we lo-

cated and fixed the line of the alleged survey of the Atlantic & Pacific Railroad as shown on Exhibit 54.

Q. That is not the question that I ask you; I ask whether you looked for any survey stakes along or adjacent to the Santa Clara River itself as it exists on the face of the earth?

A. We did not look for any survey stakes of the alleged survey of the Atlantic & Pacific Railroad as shown on Exhibit No. 54, making such search near the Santa Clara River as it exists on the face of the earth's surface, excepting at a point near to and a short distance south of the Santa Clara River, as it exists on the surface of the earth, on the north and south line between Township 4 North, Ranges 14 and 15 West, San Bernardino Base and Meridian.

Q. Do you know what the altitude of Barrel Springs is above the sea level?

A. Barrel Springs upon the surface of the earth has an elevation of about 2914 feet above the sea level.

Q. What is the elevation of Summit?

A. The Summit of Soledad Pass upon the line of the constructed Southern Pacific Railroad has an elevation of about 3212 feet.

Q. How far is Summit from Barrel Springs?

A. The Summit of Soledad Pass on the line of the constructed Southern Pacific Railroad is about 17,000 feet horizontally in an air line from Barrel Springs, which is nearly three miles and a quarter; these figures, you understand, are much more accurate than those I gave you before about elevations, which I only said about in round numbers.

Q. I will ask you to state what the elevation is of the place known as Soledad?

Mr. Redding—Do you mean on Exhibit 54, or on the earth?

Mr. Call—I am talking about Soledad, which is a known place.

Mr. Redding—I understand you refer to a portion of the earth's surface.

A. The elevation of Soledad, as it exists on the earth's surface, would be roughly as 2410 or 2415 feet; the ground is sloping, and you can get an elevation differing several feet very readily, and still call it Soledad.

Q. How far is it from Soledad by the Santa Clara River to Summit?

A. About 8 7-10 miles.

Q. A little less than 100 feet to the mile for railroad grade, then, between those points?

A. That is my remembrance of it.

Q. That is what it would be, is it not?

A. Yes, sir.

Q. What is the steepest part of the grade of the Southern Pacific Railroad between Summit and Newhall?

A.—The Southern Pacific Railroad between Summit and Newhall has a grade of 116 feet to the mile on straight lines, commonly known as tangents, and a lesser grade to the mile on curves, depending on their sharpness, at several points between the Summit of Soledad Pass and Newhall, on the constructed line of the Southern Pacific Railroad.

Q. Then the heaviest grade of the Southern Pacific between Summit and any point in the Santa Clara River, or Soledad Canyon is 116 feet to the mile?

A. 116 feet to the mile, or accurately, 2-10 per cent.

Q. Is that a practicable grade for a railroad?

A. It is.

Q. Referring to Exhibit 54, if you were now informed and know that at the time the Atlantic & Pacific Railroad Company filed its map of location in the Interior Department, nearly all the township lines projected over that map did not represent surveys upon the ground, and that in point of fact the townships covered by that map were unsurveyed, which would you regard the better evidence of the true location of the Atlantic & Pacific Railroad line—the projected line as delineated, or the natural objects and places named upon the map as being upon the line of route?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant; immaterial, in that there is no evidence on the Exhibit 54 to show that the township lines were projected upon the exhibit after the survey was made, but, on the contrary, that the exhibit shows by the certificates of the Atlantic & Pacific Railroad Company's Engineer, thereto affixed and made part thereof, that the alleged surveyed line was made with reference to the public surveys.)

The Witness—Do I understand the question to be wholly a hypothetical one in respect to, if I were informed and informed correctly?

Mr. Call—Yes.

A. If I were informed that for certain distances of any reasonable length the township lines on such a map as Exhibit 54 were not surveyed at the time the alleged survey of the Atlantic & Pacific Railroad shown on such

a map as Exhibit 54 was certified to have been made, I should consider that if outside of those limits where unsurveyed townships existed there were townships actually surveyed, and especially if upon either side of those limits there were townships or sections, or both, actually surveyed, upon which the line of alleged survey could have been definitely tied and fixed, that any subsequent projection of township lines over an intervening, and, in this instance, so far as I know, hypothetical portion of unsurveyed township lines was concerned—that such projection would correspond very closely, and on a scale of six miles to the inch, which is the scale of Exhibit 54, that such projection of township lines would correspond exactly for all practical purposes with a similar projection of township lines if they had been actually surveyed, and that the relation of the alleged line of survey to the township lines would be as truly shown on such a scale as six miles to the inch, on such projected unsurveyed township lines as have been mentioned as an hypothesis, as it would have been shown had such township lines been duly surveyed prior to the alleged survey of the railroad, as shown on Exhibit 54.

Q. Then, in order to ascertain the true location of the line, you would consider that the courses and distances, shown by the township lines upon the map, would be better evidence than the natural objects marked upon the map, is that so?

A. I would, in the absence of any other information than that which I now possess in reference to Exhibit No. 54.

Q. At what point did you make efforts to locate the Atlantic & Pacific line of survey east of Barrel Springs?

A. We did no instrumental work with reference to locating the line of alleged survey of the Atlantic & Pacific Railroad on the ground east of Barrel Springs.

Q. Did you make any efforts there to find any survey stakes? A. We did not.

Q. I believe you took some elevations somewhere over there east of Barrel Springs?

A. No, sir; I have not taken any elevations instrumentally east of Barrel Springs, on the line of the alleged survey of the Atlantic & Pacific Railroad as shown on the various Exhibits heretofore mentioned, and am not aware of having testified to having taken any such elevations instrumentally.

Q. What did you do in reference to the location of the line over there?

A. I have heretofore described in my testimony that certain points east of Barrel Springs, from my knowledge of the country, and from my great familiarity with the country, that at certain points the line of the alleged survey of the Atlantic & Pacific Railroad, as delineated on the exhibits heretofore stated during this testimony, passed over rough and impracticable ground at certain points.

Q. Do you know whether any of those townships, or township lines, east of Barrel Springs, which you testified in reference to were surveyed at the time the Atlantic & Pacific Railroad filed its map of definite location?

(Question objected to by Mr. Redding on the same grounds as last stated, and the further objection

that the testimony is incompetent, and not the best evidence, and the maps that they themselves introduced, filed by the Atlantic & Pacific Railroad Company show the surveys.)

A. I have no knowledge of the dates of the making of the United States land surveys in the region mentioned.

Q. Do you know whether those townships are now surveyed?

(Same objection.)

A. I do not, and my last answer would cover that question from the beginning of my life to the present moment.

Q. Then you did not find any section corners or other Government monuments in the territory which you have mentioned?

A. I have stated that I have made no instrumental survey to locate the alleged line of survey of the Atlantic & Pacific Railroad upon the ground east of a certain point, near Barrel Springs.

Q. Your testimony then, was made in reference to your general knowledge of the country, and not upon any actual examination?

A. It was made on my general knowledge of the country, as acquired upon the ground.

Q. At what time acquired upon the ground?

A. I think I may say safely, without being absolutely certain of dates, that at sundry times, between the years 1881 or 1882, or 1883 or 1884, somewhere along there, I could not say more definitely.

Q. You testified in regard to certain points that you described as having certain elevations, or of containing high elevations of mountains?

A. I did.

Q. How did you ascertain the location of those mountains?

A. I knew their relation to the constructed line of railroad from Mojave to the Needles of the Southern Pacific Railroad Company.

Q. How far is that line from the line of the Atlantic and Pacific Railroad?

A. The constructed line of railroad extending from Mojave to the Needles on the Colorado River is, for instance, in Townships 7 North and Ranges 7 and 8 and part of 9 East, San Bernardino Base and Meridian, a distance of, in general, about two miles north of the line of alleged survey of the Atlantic and Pacific Railroad, as shown on Exhibits 52, 53, 54 and 57.

Q. Have you produced before the Special Examiner the letters of instruction referred to from Mr. Huntington which you thought you had?

A. I have carefully looked over my files of letters from Mr. Huntington, and I have not found any, and it is my opinion that I was wrong about having received any directly from him. It is my opinion that my instructions came verbally from other officers.

Q. Did you produce before the Special Examiner the field notes of the Southern Pacific Railroad?

A. I did not.

Q. Have you been able to find them?

A. I have not.

Q. Did those field notes show the location of the Atlantic & Pacific Railroad line in the Soledad Canyon and Santa Clara River upon the ground?

A. I have no remembrance of anything of that description.

Q. Did they show any grading done in there by the Atlantic & Pacific Railroad, and the distance from the located line of the Southern Pacific?

A. I have no remembrance of anything of that kind, and I will say it would not have been natural for them to have been shown?

Q. Would those field notes show the distance of the located line of the Southern Pacific to any section corner which was found there, or other Government posts?

A. Probably they would show the distances as mentioned for any corners that were found at that time.

Q. Can you state what, if any section corners, were found at that time as shown by such field notes?

A. As I have before stated, I cannot pick out from the section corners as shown on the maps of Exhibits 59, for instance, those which were connected upon at that time.

Q. Did those field notes show the courses and distances as the line proceeded, starting from Mojave and going southerly?

A. I would say that in general such field notes would commonly show the true bearing in reference to the true meridian of some of the straight lines or tangents, and such notes would almost always show the magnetic meridian bearing of all the tangents, as a rule, unless omitted by accident.

Q. Did those field notes show the distance from one point to another along the line, as well as the variation?

A. What kind of a point do you refer to?

Q. The lineal distance from point to point, as well as the direction as shown by the compass?

A. Such notes would show the lengths of the straight lines, and they would show the distances between the points at which the transit instrument was set up or placed upon the ground in running the line, and lineal distances generally along the line of survey.

Q. I believe you said you set stakes along the line as you proceeded? A. I did.

Q. Then did the field notes show the distance from stake to stake?

A. They would show the distance between each stake at which the transit instrument was set up invariably, and there might be some intermediate stakes set up, the distance between which would not be shown.

Q. Would the field notes show the distance apart of the stakes?

A. The field notes would not show whether the stakes were 100 feet apart or 50 feet apart, but they would indicate the positions of the stakes that were 100 feet apart, and they might or might not show under the circumstances the positions of stakes intermediate between these stakes that were 100 feet apart.

Q. Is that the usual method of making such field notes?

A. It is, so far as I know.

Q. Referring to Exhibit 54, knowing as you do, that various of the townships projected over that map have not been surveyed by the Government, being within Mexican grants as you have mentioned, and there being no connection made between the Atlantic

& Pacific line at any given section corner by any distances, would you not infer that that map was not intended to represent actual surveys of township lines upon the ground either by the Government or by the Railroad Company?

(Question objected to by Mr. Redding upon the same ground as last stated, and a further objection to the use of the word "projected," in the face of the statement of the chief engineer of the Atlantic & Pacific Railroad Company thereon, wherein he certifies that the alleged survey of the Atlantic & Pacific Railroad Company has been made with reference to Government surveys, and there is no reference to any Mexican grant on said exhibit or in said statement of said chief engineer.)

A. I know that there are certain Spanish or Mexican grants, as, for instance, the Rancho San Francisco; I do not know whether the township lines were carried by survey across those Spanish grants or not, and I do know that Exhibit No. 54 states in the certificate of the chief engineer that there is shown upon Exhibit No. 54 a line of survey which is described as the line of route of the Atlantic & Pacific Railroad, and so forth, and the certificate of the chief engineer goes on to say that, "this map showing the lines of the public surveys in connection with the surveyed line of the route," and the absence of measurements or distances written on in feet from the line of said alleged survey to the corners or other points on the lines of township lines, as delineated on said map would, on the face of it, indicate that the makers of the map relied upon the graphic representation or

delineation of such distances rather than upon figures or numerals expressing such distances.

Q. What do you mean by graphic?

A. I mean by graphic the drawing or representation of distances on a map according to scale, said scale being expressed upon said map for the information of those inspecting it.

Q. Then at the time you made that survey to ascertain the location of the line of route of the Atlantic and Pacific Railroad, as shown by the projected township lines, you regarded the courses and distances indicated by those squares on that map as more reliable than the actual places mentioned on the map?

(Same objection.)

A. As before stated, I relied entirely on the statements of the certificate of the chief engineer upon the map as to what the map was, as to what it showed, and on the scale of the map as to its scale, and I may say in reference to the word "projection," that it is a term in common use for the graphic delineation on a horizontal plane of lines of railroad route, lines of the United States Government land surveys, etc.

Q. Then, did you, or did you not, regard the township lines, or projected township lines, as the case may be, as more reliable than the places marked on the map, such as the Santa Clara River and other points named?

A. I regarded the township lines and their relation to the line of alleged survey of the Atlantic & Pacific Railroad, as shown on Exhibit No. 54, as the only definite means that I had of locating the line of the Atlantic & Pacific Railroad upon the surface of the earth.

Q. Is that still your view?

A. That is still my view.

Q. When you were testifying on direct examination in reference to the grade of the Atlantic & Pacific Railroad according to the elevations which you took, as you located by the projected township lines upon Exhibit 54, did you refer to the surface grade, or did you allow for cuts and fills?

(Same objection.)

A. In testifying as to the grades shown by our survey, made with the object of placing the alleged survey of the Atlantic & Pacific Railroad, as shown on Exhibit 54, upon the earth's surface, in the position as shown on said exhibit, in reference to the township lines, I testified as to the grades we found to exist in reference to the course on the earth's surface, which I gave in round numbers with a reasonable degree of approximation.

Q. Was that based upon the surface grade?

A. It was based upon the surface of the ground.

Q. And did not allow for tunnels or for cuts, or for fills? A. It did not.

Q. Do you remember what the heaviest grade was you found?

A. I do not, I cannot recall it; I think the heaviest grade was about fifty per cent., or 2,600 or 2,700 feet to the mile.

Q. Do you know what the grade is of the railroad upon Mount Wilson, in Southern California?

A. I do not.

Q. Do you know what the heaviest grades of railroads in Switzerland are?

A. I do not remember exactly what they are.

Q. What is the heaviest grade that you know of that is run by cog-wheel?

A. I do not remember specifically; I have only general impressions on the subject.

Q. What is your remembrance?

A. My remembrance is that such grades are often as steep as 45 degrees, or even steeper, perhaps.

Q. What would be the grade at 45 degrees?

A. 45 degrees would be 100 per cent.; that is, it would rise 100 feet, for instance, in 100 feet, horizontal.

Q. What would a fifty per cent. grade be?

A. A fifty per cent. grade would rise 50 feet vertical in 100 feet horizontal; I do not remember what degree it would be.

(Adjourned by consent to September 27, 1893, at 10:30.)

San Francisco, September 27, 1893.

RE-DIRECT EXAMINATION OF WILLIAM HOOD.

Mr. Redding—Q. Have you examined Exhibit 59 for the purpose of ascertaining how far Mojave is from the mouth of Tehachapi Pass?

A. I have.

Q. Do you know about how near to Mojave the mouth of the Tehachapi Pass is?

A. About three miles, more or less.

Q. That pass extends how far up into the mountains before you come to the summit of Tehachapi Pass?

A. That pass extends from its mouth between fourteen and fifteen miles up into the mountains before coming to the summit of Tehachapi Pass.

Q. Do you know of your own knowledge whether or not Mojave, the station marked on Exhibit 59 as the initial point of the Branch Line of the Southern Pacific Railroad Company under its grant of March 3d, 1871, is at or near Tehachapi Pass?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence.)

A. I do.

Q. Which is it?

(Same objection.)

A. It is near the eastern mouth of Tehachapi Pass.

Q. Do you know at what time the main line road of the Southern Pacific Railroad was completed over and through the Tehachapi Pass to Mojave and in operation.

(Same objection.)

Mr. Call—I presume it is understood, as heretofore, that where the words "same objection" appear, the last objection preceding is deemed to be taken?

Mr. Redding—Yes, sir.

A. My remembrance is that the track was laid to Mojave from the north, and the operation of the road commenced late in the fall of 1875 or in the spring of 1876, but I am not clear.

Q. Are you sure that it was before 1878?

(Same objection.)

A. I know that it was before 1878.

Q. Was that practically the same standard gauge that the branch line road and track were concerning which you have been testifying?

(Same objection.)

A. It was the same so-called standard gauge.

Q. Did it connect with the branch line road at Mojave?

(Same objection.)

A. It did.

Q. Does it continue to do so?

(Same objection.)

A. It does.

Q. Has it ever since that time down to the present time?

(Same objection.)

A. It has.

Q. Then I understand you to say that the distance from Mojave to the mouth of Tehachapi Pass is about three miles?

(Same objection.)

A. Three miles, more or less.

Q. Turning to Exhibit 54, will you state whether or not the Santa Clara River exists on the surface of the earth in matter of fact with reference to the public surveys in the same position as it is shown to exist on the exhibit with reference to the public surveys thereon delineated?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence; and upon the further ground that it is not competent to show by parol what judicial action has been taken by the Interior Department, nor whether they

have received such map as sufficient map of definite location or otherwise; and upon the further ground that the map and line of route of the Atlantic & Pacific Railroad between the points mentioned and across the State of California, having been finally accepted and approved by the Secretary of the Interior, such action is not open to question by third parties; and upon the further ground that such map and line of route of the Atlantic & Pacific Railroad Company having been accepted and approved by the Secretary of the Interior of the United States, acting judicially and in his discretion, is not subject to a collateral attack by these defendants, nor to question by these defendants, at all; and upon the further ground that the lands involved in suit in this case having been withdrawn for the benefit of the Atlantic & Pacific Railroad Company and reserved were excepted out of the grant to the Southern Pacific Railroad Company made by the Act of Congress of March 3, 1871, as shown by the terms and conditions of said grant; and upon the further ground that the question calls for the judgment and opinion of the witness upon a matter which has been conferred exclusively upon the Secretary of the Interior to determine; and upon the further ground that the exhibits referred to are not authentic maps showing the line of definite location of the Atlantic & Pacific Railroad; and the further objection that the validity of the location of route by the Atlantic & Pacific Railroad Company from the Colorado River to Ventura has been adjudicated as a good and sufficient location of definite location by the Supreme Court of the United

States and the United States Circuit Court for the Southern District of California, as shown by the records of those cases in evidence herein.)

A. It does not.

Q. Then, if you took Exhibit 54 and endeavored to find the Santa Clara River by noting from that exhibit its course as delineated thereon with reference to the public surveys, and if you went to the township and range lines and found the same as they exist on the face of the earth, and then proceeded in the direction indicated on Exhibit 54, to where the Santa Clara River is shown to exist on Exhibit 54, would you find the river in the locality indicated on said map with reference to the public surveys upon said map?

(Same objection.)

A. I would not.

Q. What is your answer with reference to locating Barrel Springs in the same manner?

(Same objection.)

A. I would not find Barrel Springs on the surface of the earth at the point indicated on Exhibit 54, in reference to its position relative to the township lines.

Q. Then, is Barrel Springs erroneously placed on said Exhibit 54 with reference to its true location on the surface of the earth from the public surveys?

(Same objection.)

A. It is.

Q. Can you state in round numbers how far from its true position on the surface of the earth it is shown to be on Exhibit 54 in feet?

(Same objection.)

A. It is shown to be about two and a half miles southeasterly of its true position on Exhibit No. 54.

Q. About how many feet would that be?

(Same objection.)

A. About 13,200 feet.

Q. If the line of the Atlantic & Pacific Railroad Company, as it is delineated on Exhibit 54, had been made from an actual survey on the ground, and in the manner usual in making said surveys with surveying parties, and the customary instruments, could it be possible to ascribe this variation to an error in draughtsmanship?

(Same objection.)

A. I do not think it could be possibly ascribed to an error of draughtsmanship wholly.

Q. Do you find any evidences on Exhibit 54 that show that the line of the Atlantic and Pacific Railroad Company, as delineated thereon, was not made from an actual survey in the field, but in some other manner?

(Same objection.)

A. I do.

Q. Will you explain what those evidences are with reference to said exhibit?

(Same objection.)

A. There are several points that would attract the attention of an engineer who was familiar with the country and with the methods of railroad surveys, which I will mention in certain detail: for instance, taking the line of alleged survey of the Atlantic and Pacific Railroad, as shown on Exhibit No. 54, in part of Township 4 North, Range 14 West, Township 4 North, Range 13 West, and Township 4 North, Range 12 West, San Bernardino Base and Meridian, the

alleged surveyed line of the Atlantic and Pacific Railroad in these townships runs as shown by Exhibit No. 54, in what is essentially a straight line running due easterly and westerly for a distance of about twelve miles; it is safe to pronounce with absolute certainty that in Soledad Canyon, or the canyon of the Santa Clara River, which are the same, there is not twelve miles consecutively in which an actual survey line of a railroad could have run essentially upon a straight line without encountering wholly impracticable topography; and the Exhibit No. 54, between the points mentioned and for the distance mentioned, shows upon the face of it that the alleged line of survey thereon shown is not, and was not, and could never have been the actual plat, or the result of an actual platting, by any draughtsman, of the notes of an actual survey through that canyon.

Q. Please refer to some townships and ranges wherein the same condition of affairs exists, if that is the case, as shown on Exhibit 54.

(Same objection.)

A. Part of the alleged survey of the Atlantic & Pacific Railroad, as shown on Exhibit 54, in Township 4 North, Range 12 West, and Township 5 North, Range 12 West, and Township 5 North, Range 11 West, from a point on said alleged survey about three-quarters of a mile to the northeasterly, from the point marked Soledad on said alleged survey, for a distance of about five miles, the line of alleged survey is shown as extending in a general northeasterly direction, and very nearly upon an air line, so nearly as to be essentially a straight line for that distance; there is no topography between these points, or in the Soledad

Canyon in this vicinity, which would admit of a straight line of approximately five miles in length in any direction, either northeasterly or other direction, without such line passing over wholly impracticable ground for railroad construction, and Exhibit 54, in the distance mentioned, and locality mentioned, on the face of it shows that no draughtsman could have platted such a line as is shown on Exhibit No. 54 working faithfully in so platting with the field notes of a survey for a line of railroad to plat from.

Mr. Call—I object to the answer upon the grounds above set forth, and upon those grounds move to exclude the testimony of the witness.

Mr. Redding—Q. What other evidences, if any, have you discovered or found on this Exhibit 54, which indicate that the line of location of the Atlantic & Pacific Railroad Company as thereon delineated is a pretended location upon the earth's surface, and not an actual one?

(Same objection.)

A. The answers to the last two questions could be essentially repeated in reference to a large part of the alleged survey of the Atlantic & Pacific Railroad, as shown on Exhibit No. 54, with great certainty—repeated, that is in kind, not necessarily in degree, by which I mean that I could not pick out places of five miles and twelve miles in length which bore such obvious indications of not having been platted from field notes of an actual survey, but a very slight examination of the line of the alleged survey of the Atlantic & Pacific Railroad, as shown on Exhibit No. 54, and in particular between the westerly boundary

of Los Angeles county, and the point marked on said exhibit as Barrel Springs on the line of alleged survey, shows that the line of alleged survey as platted on said exhibit, does not at all resemble a line of survey through a particularly crooked and formidable canyon, which is the case in Soledad Canyon and the Santa Clara River for a considerable part of the distance mentioned; it would almost appear—without any accurate knowledge on my part of the circumstances of the making of the map, which map is the original of Exhibit No. 54, and which Exhibit No. 54 is certified to be a copy—that it had been made by some person who had a general knowledge of the country, and who knew that a line of railroad would naturally run through Soledad Canyon or along the Santa Clara River, and that he unfortunately had in his possession some imperfect map of the country, in which the Santa Clara River had been erroneously laid down in its position on the map, and without knowing that the map was erroneous in that particular, that such person had drawn the line of the alleged survey very closely following the line of the Santa Clara River as laid down upon the map, and had not platted it from any field notes of an actual survey whatever, and that this would account for both the line of alleged survey of Atlantic & Pacific Railroad as shown on Exhibit 54, being entirely on impracticable ground when located upon the surface of the earth in accordance with its position in reference to the township lines as shown on Exhibit 54, and also would account for the fact that the Santa Clara River, and other points shown near and adjacent

to the line of alleged survey of Exhibit No. 54 when placed upon the ground in reference to the lines of Government surveys, came entirely away from their true positions in reference to those lines of Government survey.

(Same motion.)

Mr. Call—Mr. Redding, will you consent that the same objection and same motion may be made to the testimony as heretofore made, without repeating it, as we have already agreed in reference to objections to questions?

Mr. Redding—Yes, sir. You have not used the words "Same motion" till now, though, and it will only apply from this time on.

Mr. Call—Yes, sir. Now, I wish to say "Same objection" to the question, and "Same motion" to the answer in regard to this line of testimony.

Mr. Redding—Very well.

Q. You spoke of having seen, at some time, some disturbances of the earth in this locality, or evidences of spots of grading other than those made by the Southern Pacific Railroad Company; do you know as a fact whether the alleged surveyed line of the Atlantic & Pacific as delineated on Exhibit 54, which is a certified copy of their map through this locality filed by the Atlantic & Pacific Railroad Company in the Interior Department, touches upon or comes near the spot or places where you saw these bits of grading or disturbances of the earth as aforesaid, or not?

(Same objection.)

A. It does not.

(Same motion.)

Mr. Call—Are you speaking with reference to the Santa Clara River, or with reference to the township lines which are projected over the map?

Mr. Redding—I am asking him whether the alleged line of location as delineated on the map filed by the Atlantic & Pacific Railroad Company, of which Exhibit 54 is a certified copy, shows along its course at any point when brought down to the earth's surface with reference to the townships and ranges and public surveys as set forth in the certificate of the engineer upon the said exhibit, or discloses any evidences of an attempt at a survey in fact on the earth in that locality.

Q. As a matter of fact, does Soledad exist on the surface of the earth as it is made to appear on Exhibit 54, with reference to the United States surveys?

(Same objection.)

A. It does not.

(Same motion.)

Q. How far from its true position is it made to appear erroneously on Exhibit 54?

(Same objection.)

A. About five miles and a quarter in an easterly direction, a little to the south of due east.

(Same motion.)

Q. Could that error be the result of the smallness of the scale upon which Exhibit 54 is drawn?

(Same objection.)

A. It could not.

(Same motion.)

Q. Could it be due, under ordinary circumstances, to an error of draughtsmanship?

(Same objection.)

A. Not under ordinary circumstances.

(Same motion.)

Q. Taking this error in connection with the others that you have pointed out, will you state whether all of them together could be the result of an error in draughtsmanship, or is the result of a pretended survey, or from some other cause than a draughtsman's error?

(Same objection.)

A. It would be beyond my experience to have any such errors occur by reason of draughtsman's errors, and I should think that the errors mentioned originated in the manner that I have heretofore described, namely, by the original of Exhibit No. 54 having had the alleged survey of the Atlantic & Pacific platted upon it without its being platted from the field notes of an actual survey.

(Same motion.)

Q. Do you find any evidences on Exhibit 54 showing an indication thereon of elevations and depressions in the earth's surface?

(Same objection.)

A. There is no profile shown, no mountain ranges, and nothing to indicate elevations and depressions of the earth's surface along the line of alleged survey of the Atlantic & Pacific Railroad, as shown on Exhibit 54.

(Same motion.)

Q. Could you, as an engineer, construct a railroad through that territory, and upon the route laid down on Exhibit 54, treating that route as a line of definite location of a railroad as shown by Exhibit 54?

Mr. Call—As shown by the projected line of survey?

Mr. Redding—Just as exhibited on the map.

(Same objection.)

A. I could.

(Same motion.)

Q. How could it be done?

(Same objection).

A. I would assume it would be proper to use the ordinary grade systems in use on first-class constructed railroads, and which grade systems are specifically limited in some of the land grant acts to 116 feet to the mile, and I could construct a railroad through Soledad Canon, and to the vicinity of Barrel Springs, upon the line of alleged survey of the Atlantic & Pacific Railroad, as laid down on Exhibit No. 54, by building it almost wholly in tunneling, say 27 miles, more or less, of tunneling, which tunneling would be nearly continuous; there might be one or two points where any one could get in and start to work both ways.

(Same motion.)

Q. Could a line of railroad be constructed upon the route laid down on Exhibit 54, in any other way except by continuous tunneling between the points named?

(Same objection.)

A. Not with any practicable rates of grade, even with a very formidable cost of construction, and with any rates of grade available on said line of alleged survey, as shown on Exhibit No. 54, even assuming some of the highest points to be tunneled with tunnels

of reasonable length, and some of the deepest depressions to be bridged with bridges of known and precedented height, the grade system would be such as to require unusual means of traction of cars over it, if so built, such, for instance, as ropes run by stationary engines to pull the cars up and let them down, or by cogged wheel and cogged rail inclined railroads, such as are used for exceedingly steep mountain railroads, to the summits of high mountains in Switzerland.

(Same motion.)

Q. If the alleged surveyed line of route of the Atlantic & Pacific Railroad Company as delineated on Exhibit 54, or Examiner's Exhibit No. 10, or as known in Case 68 Master's Exhibit No. 127, had been made or drawn off from field notes and plats, what would it of necessity have contained that does not appear on said Exhibit 54 to show a definite location of the line of railroad?

(Same objection.)

A. It would have set forth, so far as was possible upon such a scale as was used on Exhibit No. 54, which is a scale of six miles to the inch, the horizontal deflections of the line to the right and left of any given general direction, which deflections would have been caused by and made up of the curves connecting and overcoming the angle between the successive straight lines, or tangents; and in a country so crooked as Soledad Canyon a true plat of a true survey for a line of railroad made through such canyon would show a large number of such deflections and angular changes of direction in the line of survey by means of curves, and in a canyon of this description the

changes of direction would have been sufficiently marked to have been shown in considerable detail on a scale of six miles to the inch, which is the scale of Exhibit No. 54, and all but the most minute and unimportant of such changes of direction would have been shown; the line of alleged survey of the Atlantic & Pacific Railroad in Soledad Cañon, as shown on Exhibit 54, proceeds and is delineated without such changes of direction and indicated curves, and proceeds more as one would expect to find it delineated if a map of a survey through very open, gently undulating country, without mountain ranges, and without crooked and deep and difficult canyons.

(Same motion.)

Q. Do you find the same absence of these things enumerated throughout the entire exhibit?

(Same objection.)

A. I find it to a certain extent in other parts of Exhibit No. 54, but necessarily not to the same extent as between the easterly end of Soledad Cañon and the Colorado River there are no such stretches of mountain gorges, and the country is a much easier country, and a line of survey would not on a scale of six miles to the inch show any, or many at any rate, crooked pieces of delineated line of survey.

(Same motion.)

Q. Have you investigated and been over that portion of California which embraces the territory between the point on the Colorado River known as the Needles, and the Pacific Ocean, for the purpose of ascertaining which would be the most practicable and

eligible route for the construction of a railroad of a kind contemplated by the Atlantic & Pacific Act of July 27, 1866, from the Needles to the Pacific, by the most practicable and eligible route?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence, and a matter which, by the Act of Congress of July 27, 1866, has been conferred upon the Atlantic & Pacific Railroad Company to determine, under the supervision of the Interior Department; and upon the further ground that it is not competent to shew by parole what action has been taken thereon by the Interior Department, or by the Atlantic and Pacific Railroad Company; and upon the further ground that the map of definite location of the Atlantic & Pacific Railroad Company, between the Santa Clara River and the Pacific Ocean, has been accepted and approved by the Secretary of the Interior of the United States as a good and sufficient map of definite location; and upon the further ground that it is not competent for these defendants to collaterally attack, nor to question at all, the location of the Atlantic & Pacific Railroad Company, as accepted and approved by the Secretary of the Interior; and upon the further ground that the lands involved in this suit were withdrawn for the benefit of the Atlantic & Pacific Railroad Company, and reserved before the Southern Pacific Railroad Company, filed in the Interior Department its map of definite location, and by the terms and conditions of said Act of July 27, 1866, such lands were excepted out of the grant to the Southern Pacific Railroad Company, and were excepted out of the grant

to the Southern Pacific Railroad Company for the same reasons, by the terms and conditions of the Act of March 3, 1871; and upon the further ground that the question calls for the judgment and opinion of the witness upon a matter which has been conferred exclusively upon the Secretary of the Interior; and upon the further ground that it has been adjudicated by the Supreme Court of the United States, and the Circuit Court of the United States for the Southern District of California, that the map of definite location of the Atlantic & Pacific Railroad Company, from the Colorado River to the Pacific Ocean at Ventura, was a good and sufficient map of definite location, which adjudication is shown by the record of those cases on file herein.) A. I have.

Q. Have you found a route that would be shorter?
(Same objection.)

Mr. Call—May the same objection be entered here by stating “same objection”?

Mr. Redding—Yes, sir. I understand that wherever we have used the words “same objection,” it applies to the last named objection with the same force as if it were stated in full.

Mr. Call—And wherever during this trial, where we take testimony, unless it is otherwise stated.

Mr. Redding—That is my understanding. Is that your understanding?

Mr. Call—That is my understanding.

A. I have.

Mr. Redding—Q. And one that will be practicable for the building of a railroad?

(Same objection.)

A. I have.

Q. Have you made an accurate map of that portion of the State of California with reference to the Government surveys, for the purpose of showing the truth of your statements?

(Same objection.)

A. I have.

Q. Please exhibit it?

(Same objection.)

(Witness produces map.)

Mr. Redding—Defendants offer in evidence a map of constructed railroad, and surveyed route from the Needles to the Pacific Ocean on a scale of four miles to one inch, extending as far north as Range 29 West, Township 6 North, on the Pacific Ocean, and as far north as 10 North on the San Bernardino meridian; and ask that it be marked Defendants' Exhibit before the Special Examiner, No. 64.

(Same objection.)

(The map produced by witness of constructed railroad and surveyed route from the Needles to the Pacific Ocean on a scale of four miles to one inch extending as far north as Range 29 West, Township 6 North, on the Pacific Ocean, and as far north as 10 North on the San Bernardino Meridian, offered in evidence by counsel, is marked by the Special Examiner "Defendants' Exhibit before the Special Examiner, No. 64, Stephen Potter, Special Examiner.")

Q. State how this map Exhibit 64 was constructed?

(Same objection.)

A. The map Exhibit 64 was constructed by placing a piece of tracing cloth upon Exhibits 52, 53,

and 57 successively, and tracing therefrom the township, and a part of the section lines, with this difference, that where standard parallels occur a proper correction has been made by shifting the tracing cloth to make it correspond with the true correction at the standard parallel, and also there was traced from said Exhibits 52, 53 and 57, the line of alleged survey of the Atlantic & Pacific Railroad Company as shown on Exhibits 52, 53 and 57, which on examination we found to correspond in all particulars, excepting as to scale, with Exhibit 54; this description applies in particular to the townships and their interior section lines immediately adjacent to and lying upon the line of alleged survey of the Atlantic & Pacific Railroad; the remainder of the map, which is made up of the coast line of the Pacific Ocean and the various constructed railroads, or a part of the various constructed railroads existing in the region indicated, was compiled from existing maps of the constructed lines of the various railroads, so far as they could be obtained, and from maps of United States Government surveys; and also upon the map there is a yellow line extending from a point on a constructed line of the Southern Pacific Railroad in Township 3 South, Range 3 East, San Bernardino Base and Meridian, and thence in a general northeasterly direction to a point in Township 5 North, Range 14 East, San Bernardino Base and Meridian, which latter point is also a point upon the constructed line of the main line road, which yellow line is a correct plat of a line of survey for a railroad, which line of survey has been made by the Southern Pacific Railroad Company.

(Continued by consent of counsel until Thursday,
September 28th, 1893, at 10:30 A. M.)

San Francisco, Tuesday, September 28th, '93.

RE-DIRECT EXAMINATION OF WILLIAM HOOD.

(Resumed.)

Mr. Redding—Q. Do you know, from the method in which this exhibit has been constructed and traced from their official maps, whether or not the relative distances between points on the Colorado River and the Pacific Ocean, or in other words, between the eastern and western boundary of the State of California, in the region south of Tehachapi, is correctly delineated thereon, and in proper proportion on the scale of four miles to the inch?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence, and a matter, which by the Act of Congress of July 27, 1866, has been conferred upon the Atlantic & Pacific Railroad Company to determine under the supervision of the Interior Department; and upon the further ground, that it is not competent to show by parole what action has been taken thereon by the Interior Department, or by the Atlantic and Pacific Railroad Company; and upon the further ground, that the map of definite location of the Atlantic and Pacific Railroad between the Santa Clara River and the Pacific Ocean has been accepted and approved by the Secretary of the Interior of the United States as a good and sufficient map of

definite location; and upon the further ground that it is not competent for these defendants to collaterally attack nor to question at all the location of the Atlantic and Pacific Railroad, as accepted and approved by the Secretary of the Interior, and upon the further ground that the lands involved in this suit were withdrawn for the benefit of the Atlantic & Pacific Railroad Company and reserved, before the Southern Pacific Railroad Company filed in the Interior Department its map of definite location, and by the terms and conditions of said Act of July 27, 1866, such lands were excepted out of the grant to the Southern Pacific Railroad Company, and were excepted out of the grant to the Southern Pacific Railroad Company for the same reasons by the terms and conditions of the Act of March 3, 1871; and upon the further ground that the question calls for the judgment and opinion of the witness upon a matter which has been conferred exclusively upon the Secretary of the Interior; and upon the further ground that it has been adjudicated by the Supreme Court of the United States, and the Circuit Court of the United States for the Southern District of California, that the map of definite location of the Atlantic and Pacific Railroad Company, from the Colorado River to the Pacific Ocean at Ventura, was a good and sufficient map of definite location, which adjudication is shown by the record of those cases on file herein.)

A. I do.

Q. Will you state whether you have surveyed or had surveyed a line of route from a point of crossing of the Colorado River near the 35th parallel of north

latitude, and known as the Needles to the Pacific Ocean?

(Same objection.)

A. I have had such survey made of a portion of the distance, and this portion of the distance is shown on Exhibit No. 64, by the yellow line before referred to; for the remaining distance I have taken my information as to distances, etc., from the distances, etc., of existing constructed railroads.

Q. Will you state by reference to this Exhibit 64, where this survey commenced with reference to "standard north" of township and range lines, San Bernardino Base and Meridian?

(Same objection.)

A. This survey referred to as delineated on Exhibit No. 64, by a yellow line, extends from a point in Township 5 North, Range 14 East, San Bernardino Base and Meridian, to a point in Township 3 South, Range 3 East, San Bernardino Base and Meridian.

Q. Will you state seriatim through what townships this survey runs?

(Same objection.)

A. This survey runs through a portion, and in some cases, all of the following townships: Township 5 North, Range 14 East; Township 4 North, Range 13 East; Township 3 North, Range 13 East; Township 3 North, Range 14 East; Township 2 North, Range 13 East; Township 2 North, Range 12 East; Township 2 North, Range 11 East; Township 2 North, Range 10 East; Township 2 North, Range 9 East; Township 1 North, Range Nine East; Township 1 North, Range Eight East; Township 1

North, Range 7 East; Township 1 North, Range 6 East; Township 1 North, Range 5 East; Township 1 South, Range 5 East; Township 1 South, Range 4 East; Township 2 South, Range 4 East; Township 3 South, Range 4 East; Township 3 South, Range 3 East; all of San Bernardino Base and Meridian.

Q. Was there a physical survey made by you and under your instructions, by a party of competent surveying engineers, through these townships enumerated?

(Same objection.)

A. There was.

Q. How long ago?

(Same objection.)

A. The survey was made in the present year, 1893, between and including May 28th, 1893, and August 3rd, 1893.

Q. With what alleged line of road, or constructed road, does the easterly end of this survey connect?

(Same objection.)

A. The easterly end of this survey connects with the constructed line of railroad extending from Mojave to the Needles.

Q. And the westerly end connects with what survey of constructed line of road?

(Same objection.)

A. The westerly end connects with the constructed line of railroad of the Southern Pacific Railroad from Tehachapi Pass to Fort Yuma.

Q. In what township and range in the latter case?

(Same objection.)

A. In Township 3 South, Range 3 East, San Bernardino Base and Meridian.

Q. And in the first instance, in what township does it connect with the constructed main line of the road from Mojave to the Needles?

(Same objection.)

A. In Township 5 North, Range 14 East, San Bernardino Base and Meridian.

Q. By means of this recent survey, have you been enabled to find a shorter route from the Needles to the Pacific Ocean than the route indicated by the alleged line of survey on the maps of the Atlantic and Pacific Railroad Company, as shown on Exhibits 52, 53, 54 and 57?

(Same objection.)

A. I have.

Q. Will you explain in detail how you have found a shorter route?

(Same objection.)

A. Commencing at the Needles on the Colorado River, by which I mean Needles Station on the constructed line of railroad extending from Mojave to the Needles on the Colorado River, and taking account of the distance on said constructed line of railroad to the point in Township 5 North, Range 14 East, San Bernardino Base and Meridian, at which the line of survey heretofore described as a yellow line joins or diverges from the line of constructed railroad extending from Mojave to the Needles; thence taking the distance found to exist on said line of survey indicated as before mentioned on Exhibit No. 64, by a yellow line to its point of junction with a divergence from the line of constructed railroad of the Southern Pacific Railroad, extending from Los

Angeles to Fort Yuma, which point is in Township 3 South, Range 3 East, San Bernardino Base and Meridian; thence taking the distance on the constructed line of railroad last mentioned to Colton; thence taking either one of the two following routes about to be described to the Pacific Ocean, namely:—from Colton by the constructed line of the Southern Pacific Railroad to Los Angeles; thence by the constructed line of railroad to Santa Monica, on Santa Monica Bay, as one of the divergent routes; or, for the other divergent route, taking the constructed line of railroad, which I think belongs to the California Southern Railroad Company, subject to correction as to exact name of the corporation, and extending from Colton, near Riverside, and sundry other towns, and via the valley of the Santa Ana River, to a point at which it turns southwesterly, which point is in Township 3 South, Range 9 West, San Bernardino Base and Meridian; thence from this point over a level country, taking a distance as obtained from accurate measurement upon the maps to Thenard on the constructed line of railroad extending from Los Angeles to San Pedro; thence, taking the distance on the said last mentioned constructed line of railroad to San Pedro; thus obtaining distances to two points on the Pacific Ocean from the Needles on the Colorado River, both of which points are now in use, and have been more or less in use for a long period, for the use of shipping on the Pacific Ocean, I have determined that by either of these distances the Pacific Ocean is reached by a shorter route from the Needles on the Colorado River than by the route of alleged survey of the Atlantic

and Pacific Railroad as shown on Exhibits 52, 53, 54 and 57.

Q. How much shorter is the distance obtained by means of these recent surveys between the points named than as shown on the maps of the Atlantic and Pacific Railroad Company?

(Same objection.)

A. The distance from the Needles to San Pedro by the routes just outlined is in round numbers $25\frac{1}{4}$ miles less than the distance from the Needles to San Buenaventura as also outlined, as shown by the maps of the alleged survey of the Atlantic & Pacific Railroad Company as shown on Exhibits 52, 53, 54 and 57, before mentioned.

Q. What means did you take to establish the accurate distance between the Needles and the Pacific by the route you have just mentioned as being recently surveyed, and otherwise?

(Same objection.)

A. The route that I have just mentioned as having been recently surveyed, and as indicated by the yellow line on Exhibit 64, situated as heretofore described, was very carefully surveyed in the usual manner and with the usual instruments, chains, etc., and was so carefully made that there is no possibility of any material error in the result.

Q. Have you compared those results themselves with the measurements made?

(Same objection.)

A. I have looked them over carefully myself, and have seen no indication whatsoever of any material error, in addition to which the plat of the line made care-

fully in the office fits the maps and fits the lines of constructed railroad as delineated on Exhibit No. 64, both plattings being made accurately and independently.

Q. Did you take part in the location and construction of that portion of the main line of the Southern Pacific Railroad Company which extends from the Needles to the beginning of this survey to a point 5 North, 14 East, San Bernardino Base and Meridian?

(Same objection.)

A. I took such part in it as I would ordinarily take as Assistant Chief Engineer of the Southern Pacific Railroad.

Q. Are you familiar with that territory between those points.

(Same objection.)

A. I am.

Q. Do you know of your own knowledge that the distances that you have enumerated are correct between those points in your additions to ascertain the length of route from the Needles to the Pacific Ocean by the route recently surveyed?

(Same objection.)

A. I do.

Q. Are you familiar with the country between that point where the recent survey ended, namely, a point in Township 3 South, Range 3 East, S. B. M., and thence to the Pacific by the routes that you have mentioned?

(Same objection.)

A. I am quite familiar with it.

Q. Did you take part in the survey that resulted in the construction of the road between those points?

(Same objection.)

A. I did not.

Q. Will you state what other sources of information you used to ascertain the exact distance between that point in Township 3 North, Range 3 East, where the recent survey ends to the Pacific Ocean?

(Same objection.)

A. I used the same information that is contained as to distances, etc., on the constructed line of the Southern Pacific Railroad, between Colton and the point named in Township 3 South, Range 3 East, San Bernardino Base and Meridian, as is contained on the maps of the said Southern Pacific Railroad heretofore introduced into this case as Exhibits 61 and 62.

Q. Did you also take into consideration the distance indicated by the Government surveys on these various exhibits?

(Same objection.)

A. I did.

Q. In the survey recently made as indicated by the yellow line on Exhibit 64, and as going through the townships named, seriatim, by you in your testimony, have you found a practicable line of route for a railroad such as is contemplated in the Act of Congress of July 27, 1866, known as the Atlantic and Pacific Act?

(Same objection.)

A. I have.

Q. Do you know, as a matter of fact, whether a line of railroad from the Needles to the Pacific Ocean by the route recently surveyed, and as described by you in your testimony, will be more direct, more

practicable and more eligible, than that line of route between the Needles and the Pacific, or between the point of crossing the Colorado River, at or near the 35th parallel and the Pacific Ocean, as indicated on the maps of the Atlantic and Pacific Railroad Company?

(Same objection.)

A. I do; as being shorter and of the same grade rates in all essential particulars, and as terminating at a practicable port on the Pacific Ocean.

Q. Is the survey that you recently made, as indicated on Exhibit 64 by the yellow line marked thereon, a practicable survey for the construction of a railroad?

(Same objection.)

A. It is.

Q. How much, if at all, shorter is the line of route from the Needles to the Pacific Ocean, to Santa Monica, by the route recently surveyed, than the line of the alleged survey from the Needles to the Pacific, as indicated on the maps of the Atlantic and Pacific Railroad Company?

(Same objection.)

A. It is a trifle over 17 miles shorter to Santa Monica by way of Los Angeles by the surveys recently made, combined with the constructed railroad, heretofore described, between the Needles and the Pacific Ocean at Santa Monica than the distance between the Needles and the Pacific Ocean at San Buenaventura, as shown by the alleged survey of the Atlantic and Pacific Railroad on Exhibits 52, 53, 54 and 57.

Mr. Redding—That is all.

RE-CROSS-EXAMINATION.

By Mr. Call—Q. Does not a range of mountains running easterly and westerly, a continuation of the San Gabriel Range, of the San Bernardino Mountains, run across your survey, marked in yellow, at a point in Townships 1 or 2 South, Ranges 3 and 4 East, San Bernardino Base and Meridian?

A. There is a range of mountains, which can be generally described as in the question, which, like other ranges, the survey has passed through.

Q. What is the name of that range?

A. I do not know what the proper name of the range at that particular point would be.

Q. That is a continuation of the San Gabriel range, is it not?

A. It may be said to be a continuation of the San Gabriel and the San Bernardino Mountain Range.

Q. And it runs through the townships I have mentioned?

A. It runs through the townships you have mentioned; yes, sir.

Q. Did you find a pass through those mountains where you located your survey? A. We did.

Q. What is the name of that pass?

A. The name of that pass is Morongo Pass.

Q. Did you take the altitude of the pass?

A. We did.

Q. What is the altitude above sea level?

A. The altitude of Morongo Pass may be stated in two ways, above the sea level; first, as to the altitude of the proposed constructed grade of the railroad if built upon the survey indicated by the yellow line

on Exhibit 64; secondly, by the altitude of the ground surface as at present existing on said survey; the altitude of the proposed grade if a railroad were constructed upon said survey is 3,459 9-10ths feet above the level of the sea.

Q. Does that contemplate a cut or a tunnel?

A. The altitude of the ground surface is 3,494 9-10 feet above the level of the sea, which would contemplate a cut of a depth of 35 feet.

Q. For what distance?

A. It is for a short distance, I forget exactly; it may be 300 or 400 feet in length, but I would not say absolutely from memory.

Q. Did you take the altitudes at various points along that proposed line marked in yellow?

A. We did.

Q. What is the lowest altitude you found between Township 3 South, Range 3 East, and Township 5 North, Range 14 East?

A. My remembrance, without referring to the profiles, of the lowest point is that it was in the vicinity of what is known as Perry's Basin, and the elevation is approximately, speaking entirely from memory, about 500 feet above the sea level.

Q. I believe you stated yesterday that the Soledad Pass was in the Santa Clara River, that they were one and the same place?

A. I stated yesterday that Soledad Canyon and the valley of the Santa Clara River were to a certain extent interchangeable terms for a part of the distance on the Santa Clara River.

Q. Well, for practically all the distance from Summit to Newhall?

A. Practically all the distance from Summit to the point originally known as Newhall.

Q. What is the altitude of the summit of the Soledad Pass upon the line of the Southern Pacific Railroad?

A. 3,212 feet in round numbers.

Q. What is the maximum grade as shown by your survey through the Morongo Pass?

A. The maximum grade used on the survey through Morongo Pass was 116 feet to the mile on a straight line and a less grade on curves from a point near the summit of Morongo Pass descending southerly and westerly; from a point at or near the summit of Morongo Pass descending easterly and northerly the maximum grade was 1 4-10ths per cent., which corresponds nearly to 74 feet to the mile on straight lines and a less grade on curves.

Q. Referring to your survey to locate the Atlantic and Pacific Railroad line in Santa Clara River, or Soledad Canyon, or in that region, as shown by the projected lines upon the plat of the Atlantic and Pacific Railroad, did I understand you to say that you looked for the survey stakes of the Atlantic and Pacific Railroad upon the ground in the Soledad Canyon?

A. We looked only for the survey stakes of the alleged line of survey of the Atlantic and Pacific Railroad as shown on Exhibit No. 54, on the ground where and in the vicinity of where we replaced the line of said alleged survey as shown by its relation to the township lines on Exhibit No. 54, and the subdivisions in said township lines.

Q. Then you did not look for the survey stakes in the canyon itself?

A. We did not look for the survey stakes of the alleged survey of the Atlantic and Pacific Railroad as shown on Exhibit 54, in the canyon itself—meaning by that the bed or near the bed of the Santa Clara River—excepting at a point which I previously testified with reference to, where said line of alleged survey of the Atlantic and Pacific Railroad as shown on Exhibit No. 54, in reference to the township lines on said Exhibit No. 54, did cross the bed of the Santa Clara River as it exists on the ground.

Q. Did you look for the survey stakes of the line of the Atlantic and Pacific Railroad at or in the vicinity of Barrel Springs?

A. We did not look for the survey stakes of the alleged survey of the Atlantic and Pacific Railroad as shown on Exhibit No. 54, at or near Barrel Springs, where the latter exists on the earth's surface.

Q. Did you look for them at Soledad?

A. We did not look for them at Soledad, as it exists upon the earth's surface.

Q. Did you look for them along adjacent to the Mojave River? A. We did not?

Q. What is the actual distance from Barrel Springs to Soledad by way of the summit of the Soledad Pass and the Santa Clara River?

A. The actual distance from Barrel Springs as it exists on the surface of the earth, by way of the summit of Soledad Pass, as it exists on the constructed line of the Southern Pacific Railroad, and thence to Soledad, as it exists on the surface of the earth, by

way of the constructed line of the Southern Pacific Railroad, which is all that I can speak of with accuracy, which is substantially the same distance as by the way of the bed of the Santa Clara River, is 12 1-10 miles, more or less, to the best of my remembrance.

Q. Are you acquainted with a canyon that comes in from the north into the Santa Clara River, or Soledad Pass, in Township 4 North, Range 14 West?

A. I am.

Q. Is there more than one canyon coming in that township from the north?

A. There are a large number of canyons coming in that township from the north into the Santa Clara River, some of them more important canyons than others.

Q. Do you know of any particular canyon there which is known as the point of the mouth of the Soledad Pass?

A. I do not know as definitely as I would usually know about a pass what point would be called the mouth of Soledad Pass; two different persons or two different engineers might easily differ as to what point on the ground to select to be called the mouth of Soledad Pass on account of certain topographical peculiarities of the Santa Clara River and the region.

Q. How far is it from the summit of Tehachapi Pass to Mojave?

A. In round numbers, eighteen miles.

Q. Does the line of the Southern Pacific Railroad Company running southerly from the summit of Tehachapi Pass follow more than one canyon?

A. I will answer that in general it does not, but I can, if desired, give a more detailed description of what I mean by "in general."

Q. Please refer to the map.

A. The map does not show, but I can describe it verbally so you will know what I mean.

Q. Give a description of it, please?

A. The line of the constructed Southern Pacific Railroad Company from the summit of Tehachapi Pass follows, in proceeding easterly and southerly, open slopes for a considerable distance which are tributary to a body of water, commonly known as Salt Lake; these open slopes are of a very large extent, and can in no way be described as a canyon; they might more properly be described as a valley, at the lowest point of which is situated the bed of this Salt Lake, which is sometimes nearly, or quite, dry; this salt lake is separated from what is commonly known as Cameron's Canyon in proceeding easterly from the summit of Tehachapi Pass by a very slight divide, which divide is very wide—it may be three quarters of a mile or more in width—and which at its lowest point is but a very few feet, perhaps two or three feet, higher than the highest stage of the water in what I have called Salt Lake; from the very slight divide, Cameron's Canyon descends to the eastern mouth of what is known as Tehachapi Pass, near Mojave, and the line of constructed railroad of the Southern Pacific Railroad Company follows this Cameron's Canyon from this divide at the southerly and easterly side of Salt Lake to the mouth of Tehachapi Pass, near Mojave.

Q. Is Cameron's Canyon, which you speak of, a part of the Tehachapi Pass?

A. It is a part of the Tehachapi Pass, as properly so known; the water from the summit of Tehachapi Pass, which first runs into the Salt Lake, which I have described as lying to the east and south of Tehachapi Pass, would then, and does then, overflow from the Salt Lake and runs into and down Cameron's Canyon into the Mojave Desert, when the water in the Salt Lake is high enough to admit of such overflow, which has occurred, as I judge from the signs on the ground which would indicate such matters, but which I have never, with my own eyes, however, seen occur; and I will say further, that as indicating the slight nature of the divide, that the constructed grade of the constructed Southern Pacific Railroad from the summit of Tehachapi Pass to the eastern mouth of Tehachapi Pass, runs either with a descending or occasional short bits of level grade continuously from the summit of the Tehachapi Pass to the easterly mouth of Tehachapi Pass, which is also the easterly mouth of Cameron's Canyon, and does in no instance have any ascending grade southerly and easterly between those points.

Q. Is the crossing of the Colorado River at the place where it is delineated on Exhibit 64 as being the terminus of the railroad?

A. The crossing of the Colorado River by the constructed line of railroad from Mojave to the Colorado River in the vicinity of the Needles, as delineated on Exhibit 64, is correctly shown, said crossing being the crossing of the river originally constructed.

Q. Where is the present crossing?

A. Since the railroad hereinbefore referred to was originally constructed I am informed, but do not know of my own knowledge on the ground, that the railroad has been extended along the westerly side of the Colorado River to the south and east of the point where it originally crossed the Colorado River, and that a new piece of railroad to reach a new bridge, and a new bridge in crossing of the Colorado River having been built.

Q. Where is the present new bridge from the town of Needles?

A. I can only speak of this from report and from my knowledge of the topography of the country, which would indicate to me by means of the descriptions I have received of and photographs I have seen of the new crossing and new bridge of the Colorado River that they are about six miles, more or less, in a general southeasterly direction from the crossing of the Colorado River which was first built and operated.

Q. What was the reason for changing the crossing?

A. I have no knowledge of this save from newspaper reporters and general sources of information, as it is not anything that I have had anything whatsoever to do with.

Q. Speaking from your knowledge of the topography of the country which you have referred to on your previous examinations, can you not state why the crossing was moved?

A. From my knowledge of the topography along the Colorado River and the vicinity of the Needles, together with reports that I have received from various sources, more or less authentic, including news-

paper reports, I believe that at the crossing originally constructed across the Colorado River, the channel of the Colorado River suddenly commenced to endeavor to shift or change to a point farther east than it occupied when the road was originally constructed, and I believe this to be possible from my knowledge of the fact that there was quite a width of bottom land on the easterly side of the then existing channel of the Colorado River, made up of the usual Colorado bottom land silt, and that after a very considerable expenditure and efforts to prevent the channel of the river from shifting to a point farther east, it was considered by the proper parties, whoever they may have been, expedient to build a railroad to a crossing and build a crossing at another point on the Colorado River, which point I have roughly indicated the situation of.

Mr. Redding—I may recall Mr. Hood, not for the purpose of having him give any more testimony than I know of, but when the exhibits in the possession of Mr. Lamme, introduced by the Government, are brought to Mr. Hood's personal attention and investigation, particularly what is known as Examiner's Exhibit 10, which was in Record 68, known as Master's Exhibit 127, and other exhibits, I shall ask Mr. Hood to compare them by actual comparison, and tracing with the exhibits that we have been using in this case on his testimony here.

Mr. Call—I would like to have the testimony of Mr. Hood closed.

Mr. Redding—It is, I understand.

Mr. Call—And if you recall him it will be as a new witness?

Mr. Redding—Not as a new witness.

Mr. Call—But you will recall him for the purpose of examination in chief?

Mr. Redding—Oh, yes, and with reference to a comparison of the exhibits in the possession of the Master in Chancery, Mr. Lamme, which are at present not before the Special Examiner, although we have here copies of the official record in Case 68, which include in them the certified copies of the maps introduced by the Government, and now in the possession of Mr. Lamme.

Mr. Call—I object to the testimony which has heretofore been given on the trial of this case by the witness William Hood as incompetent, immaterial and irrelevant, and not the best evidence; and upon the further ground that it is not competent to show by parole what judicial action has been taken by the Interior Department, nor whether they have received such map as a sufficient map of definite location or otherwise; and upon the further ground that the map and line of route of the Atlantic and Pacific Railroad between the points mentioned and across the State of California having been finally accepted and approved by the Secretary of the Interior, such action is not open to question by third parties; and upon the further ground that such map and line of route of the Atlantic and Pacific Railroad Company having been accepted and approved by the Secretary of the Interior of the United States, acting judicially and in his discretion, is not subject to a collateral attack by these defendants, nor to question by these defendants, at all; and upon the further ground that the lands

involved in suit in this case having been withdrawn for the benefit of the Atlantic and Pacific Railroad Company and reserved, were excepted out of the grant to the Southern Pacific Railroad Company made by the Act of Congress of March 3, 1871, as shown by the terms and conditions of said grant; and upon the further ground that the question calls for the judgment and opinion of the witness upon a matter which has been conferred exclusively upon the Secretary of the Interior to determine; and upon the further ground that the exhibits referred to are not authentic maps showing the line of definite location of the Atlantic & Pacific Railroad; and the further objection that the validity of the location of route by the Atlantic & Pacific Railroad Company from the Colorado River to Ventura has been adjudicated as a good and sufficient location of definite location by the Supreme Court of the United States, and the United States Circuit Court for the Southern District of California, as shown by the records of those cases in evidence herein. And upon those grounds I move the Court to exclude such testimony.

Mr. Redding—It will be proper for the defendants' counsel to insert at this time in the record some statement of reply to that motion, which I will do in a few words, and which reply is this:

The Supreme Court of the United States in the cases of the United States vs. the Southern Pacific Railroad Company recently decided and reported in 146 U. S., have said in substance, that if it be shown that the Atlantic & Pacific Railroad Company did not definitely locate its line of road in the State of California where

the alleged overlap takes place, that the Southern Pacific Railroad Company's grant is broad enough in terms to take the lands; and hence we submit that the testimony is relevant, and will be pleased to argue the motion before the Court at the proper time.

Mr. Call—I differ with counsel as to what the Supreme Court said, and as to what meaning was intended by the Court to be attached to what was said, in regard to the location of the Atlantic & Pacific Railroad route.

Mr. Redding—Mr. Call, in a day or two I would like to have the examination for the benefit of the defendants taken in the office of the United States Surveyor General for the District of California, and, if you please, I will notify you a day beforehand so that we can meet there and not have to come here.

Mr. Call—That is satisfactory.

(A recess was then taken by consent of counsel until 2:15 p. m.)

Testimony of William Hood:

RE-DIRECT EXAMINATION.

(Resumed.)

(This portion of the testimony of the witness was taken on October 6th, but is placed at this point in the record for convenience in signing.)

Mr. Redding—Q. Will you please take the Government's Exhibit No. 10 in this case handed to you now by the Standing Master, Judge Lamme, and compare it with Defendants' Exhibit before the Special Exam-

iner, No. 54, and state whether or not you find that they are identical so far as the alleged location of the line of the Atlantic & Pacific Railroad Company, with reference to the Government surveys through the portion of the State of California thereon depicted is concerned?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence; and upon the further ground that the lands in suit herein were excepted out of the grant to the Southern Pacific Railroad Company by the terms and conditions of the Act of Congress of March 3, 1871, and by the terms and conditions of the Act of Congress of July 27, 1866; and upon the further ground that the lands in suit herein were withdrawn for the Atlantic & Pacific Railroad Company, and were reserved before the Southern Pacific Railroad Company filed its map of definite location in the Interior Department; and upon the further ground that the matters in issue in this suit have been finally decided and adjudicated by the Supreme Court of the United States, and by the United States Circuit Court for the Southern District of California, as shown by the records of such decisions in evidence herein; and upon the further ground that the Southern Pacific Railroad Company, to which a grant was made by the Act of Congress of March 3, 1871, by entering into the Articles of Consolidation and Amalgamation in evidence herein, marked Master's Exhibits 1, 2 and 3, and Defendants' Exhibits before the Special Examiner, Nos. 88 and 89, has surrendered to the United States all interest in these lands, and surrendered to the United States in each such case of consolidation all right to

earn such lands by constructing a railroad and all franchises granted by said Acts; and upon the further ground that the Southern Pacific Railroad Company by its lease to the Southern Pacific Company of Kentucky, in evidence herein, marked Defendants' Exhibit before the Special Examiner, No. , has put it beyond its power to comply with any of the terms and conditions of the Acts of Congress of March 3, 1871, or July 27, 1866; and upon the further ground that the map of definite location of the Atlantic & Pacific Railroad Company from Springfield, Missouri, by way of the Colorado River to the Pacific Ocean, has been judicially determined to be a good and sufficient map of definite location by the Secretary of the Interior, acting in his discretion, and having exclusive cognizance of such matter.)

A. I find them essentially identical in all particulars concerning the alleged line of survey of the Atlantic & Pacific Railroad in its position in reference to the township lines of the Government survey.

Q. Will you state, then, whether or not the testimony you have given with reference to Exhibit 54, and all of the testimony, applies with equal correctness to Exhibit No. 10?

(Same objection.)

A. It does.

Q. And do you now so testify with reference to Exhibit No. 10 as you heretofore have testified with reference to Exhibit No. 54?

(Same objection.)

A. I do.

(No cross-examination.)

WILLIAM HOOD.

San Francisco, Thursday, September 28, 1893.

2:15 P. M.

Testimony of J. L. Willcutt:

J. L. Willcutt, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. Redding—Q. What is your present occupation?

A. Secretary of the Southern Pacific Railroad Company and other corporations.

Q. How long have you been Secretary of the Southern Pacific Railroad Company?

A. Since October, 1870.

Q. In what occupation were you before that time?

A. Secretary of the San Francisco and San Jose Railroad Company, which was one of several corporations that were consolidated into the Southern Pacific Railroad Company.

Q. Can you produce the resolution of the Board of Directors of the Southern Pacific Railroad Company, or a copy thereof, showing when you were appointed Secretary, if desired by the Government counsel?

A. I can give you a certified copy of the record of the proceedings of the meeting at which I was elected.

Mr. Redding—I wish you would do so at your convenience.

Q. The Congress of the United States made a grant of lands on March 3, 1871, to the Southern Pacific Railroad Company, known as the branch line grant from Tehachapi, by the way of Los Angeles to Fort Yuma; can you produce the minutes of the Southern Pacific Railroad Company at about that time, wherein,

if it is a fact, the Southern Pacific Railroad Company accepted the terms, impositions and conditions of that grant?

A. I can do so.

Q. Will you please produce them?

(Witness produces a book which is endorsed, "Record A, Southern Pacific R. R. Co.")

Q. What volume have you produced?

A. Volume A, of the minutes of the meetings of the Southern Pacific Railroad Company, both of the stockholders and the directors.

Q. Will you please turn to that page of the record wherein you were declared elected the Secretary of the Company, and will you read, and quote in reading, that portion of the record of the particular meeting, giving it as to date, when you were elected?

Mr. Call—I object to the question, and to the testimony asked for, upon the ground that the same is incompetent, immaterial and irrelevant; and upon the further ground that the Southern Pacific Railroad Company therein referred to is not the same corporation nor the same Southern Pacific Railroad Company, defendant in this suit; and upon the further ground that the lands involved in this case were excepted out of the grant to the Southern Pacific Railroad Company by the terms and conditions of the Act of Congress of July 27, 1866, and the Act of Congress of March 3, 1871, the lands in suit herein having been withdrawn for the benefit of the Atlantic & Pacific Railroad Company and reserved before the Southern Pacific Railroad Company filed its map of definite location; and upon the further ground that the ques-

tions of law and of fact at issue in this case have been finally adjudicated by the Supreme Court of the United States, and by the United States Circuit Court for the Southern District of California, in a suit between the same parties, as shown by the records of such decisions, which are in evidence herein.

A. (Reads:) "At a meeting of the Board of Directors of the Southern Pacific Railroad Company held "on Wednesday, the 12th day of October, 1870, for "the purpose of organizing as a Board and the election of the necessary officers for the ensuing year" * * * J. L. Willcutt was nominated for Secretary, "and receiving the unanimous vote of the Board, was "declared duly elected Secretary of the Company."

(I hereby certify that I have compared the statement of the witness in the foregoing answer with the minutes of the meeting of the Board of Directors of the Southern Pacific Railroad Company, held on Wednesday, the 12th day of October, 1870, as they appear on page 6 of the volume endorsed "Record A, Southern Pacific R. R. Co.," and find it to be a full, true and correct statement of the words appearing in said minutes in that particular.

STEPHEN POTTER,
Special Examiner.)

Mr. Redding—I suppose that the same agreement between us will be followed in this case, that where the Special Examiner certifies to the correctness of a portion of any document or resolution, that that will suffice instead of putting the entire volume in evidence?

Mr. Call—I have no objections to the Special Examiner making a copy of such parts of the written evi-

dence as you direct him to make in this instance, and that it may stand in lieu of the original, subject to the same objections made.

Mr Redding—Mr. Examiner, if the quotation of the witness from the original record is correct, will you please state so in parenthesis after the quotation in your record of this testimony.

Q. Will you please turn to the resolution of the Board of Directors of the Southern Pacific Railroad Company, if such resolution exists, wherein it was resolved to accept the terms, impositions and conditions of the Act of Congress of March 3, 1871, above referred to, and will you read that resolution from your original record?

(Same objection.)

A. (Reads:) "At a meeting of the Board of Directors held on May 16th, 1871, the following resolution was presented by Lloyd Tevis, and adopted by a unanimous vote: RESOLVED, that this company will and does hereby accept the terms, conditions and impositions of the Act of the Congress of the United States, entitled 'An Act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road, and for other purposes,) approved March 3d, 1871, and that a copy of this resolution of acceptance, certified under the seal of this company, be forwarded to and filed with the Secretary of the Interior."

(I hereby certify that I have compared the statement of the witness in the foregoing answer with the minutes of the meeting of the Board of Directors of the Southern Pacific Railroad Company, held on May

16th, 1871, as they appear on page 41 of the volume endorsed "Record A, Southern Pacific R. R. Co." and find it to be a full, true and correct statement of the words appearing in said minutes in that particular.

STEPHEN POTTER,
Special Examiner.)

Mr. Call—The evidence is objected to upon the ground that the same is incompetent, immaterial and irrelevant; and upon the further ground that the Southern Pacific Railroad Company, therein referred to, is not the same corporation nor the same Southern Pacific Railroad Company, defendant in this suit; and upon the further ground that the lands involved in this case were excepted out of the grant to the Southern Pacific Railroad Company by the terms and conditions of the Act of Congress of July 27, 1866, and the Act of Congress of March 3, 1871, the lands in suit herein having been withdrawn for the benefit of the Atlantic & Pacific Railroad Company, and reserved before the Southern Pacific Railroad Company filed its map of definite location; and upon the further ground that the questions of law and of fact at issue in this case have been finally adjudicated by the Supreme Court of the United States, and by the United States Circuit Court for the Southern District of California, in a suit between the same parties, as shown by the records of such decisions which are in evidence herein; and upon the further ground that it is not the best evidence of the matter sought to be adduced.

Mr. Redding—Q. Is that resolution followed by the seal of the Company and the signature of the Sec-

retary of the Company, certifying that the resolution was passed?

A. It is not usual to place any seal, but to sign upon the records by myself, as Secretary of the meeting, which was done in this case.

Q. Has a copy of this resolution been forwarded by you as Secretary, and deposited in the Interior Department?

(Same objection.)

A. It has been.

Q. What Directors were present at that meeting of the Company when that resolution was passed?

(Same objection.)

A. Charles Crocker, Leland Stanford, Lloyd Tevis, Charles Mayne and Peter Donahue.

Q. Who were the Directors of the Southern Pacific Railroad Company at that time?

(Same objection.)

A. Those already named, together with C. P. Huntington and Mark Hopkins.

Q. Is that the original record that you are reading from?

(Same objection.)

A. Yes, sir.

Q. Is that your signature attached to the resolution?

(Same objection.)

A. Yes, sir; attached to the proceedings of the meeting.

Q. Did you sign your name there?

(Same objection.)

A. Yes, sir.

Q. Were you present at the meeting?

(Same objection.)

A. Yes, sir.

Q. Did you hear the resolution proposed and carried?

(Same objection.)

A. I did, I read it myself.

Q. Were those gentlemen present that you have enumerated?

(Same objection.)

A. They were.

Q. Did you see them there.

(Same objection.)

A. Yes, sir.

Q. Have you, as Secretary of the Southern Pacific Railroad Company, had in charge, or been instrumental in making any reports to the Interior Department of the Government of the proceedings of this Railroad Company, subsequent to March 3d, 1871, and in pursuance of the Act of Congress last above referred to?

(Same objection.)

A. I have.

Q. Will you state in what manner reports have been made, and for what purpose, and generally with reference to what subject matter, from the Southern Pacific Railroad Company to the Interior Department?

(Same objection.)

A. I have here a complete list of such reports, which I can give *in extenso*, if they are wished.

Q. What are those reports in general?

(Same objection.)

A. The operations of the road.

Q. Please give a list of these reports that have been made through your instrumentality to the Interior Department subsequent to 1870?

(Same objection.)

A. In 1871, 1872, 1873, 1874, 1875, 1876 and 1877, annual reports were made to the Secretary of the Interior, for the year ending June 30th. They called for:

1st. Names and residences of stockholders.

2d. Names and residences of directors.

3d. Amount of stock subscribed, and amount of stock actually paid in.

4th. A description of the lines of road surveyed, of the lines thereof, fixed upon for the construction of the road, and the total cost of such surveys.

5th. The amount received from passengers on the road.

6th. The amount received for freight thereon.

7th. The expense of said road and its fixtures, total and annual separately.

8th. The indebtedness of said Company, setting forth the various kind thereof, and were accompanied by the reports of the Chief Engineer, Superintendent and Land Agent.

For the years 1878, 1879 and 1880, semi-annual and annual reports were made to the U. S. Auditor of Railroad Accounts.

The report to June 30th, 1878, called for:

Names and residences of officers and directors, with business address.

Copies of printed reports of the company for years 1873 to 1877, inclusive.

Copies of all schedules of rates—passenger and freight.
Copies of all joint schedule of rates—passenger and freight.

Copies of all contracts for special rates—passenger and freight.

Debit and credit footings of ledger on June 30, 1877, December 31, 1877, and June 30, 1878.

Copies of contracts with any Telegraph Company, sleeping-car company, and express company or fast freight line or transportation company.

Copy of By-Laws.

Revenue from all sources for 6 months ending June 30, 1877, December 31, 1877 and June 30, 1878.

Special Report of ownership and control of road.

Copy of lease with Central Pacific Railroad Co.

Copies of Articles of Association with San Francisco and San Jose Railroad Co. et al., Southern Pacific Branch Railroad Co., and Los Angeles and San Pedro Railroad Co.

Statistics of passenger and freight traffic for year ending December 31, 1877, and 6 months ending June 30, 1878.

Statement showing kinds and amount of freight moved for 6 months ending June 30, 1877, December 31, 1877, and June 30, 1878.

Operating and other expenses for six months ending June 30, 1877, December 31, 1877, and June 30, 1878.

Income expenses for 6 months ending June 30, 1877, December 31, 1877, and June 30, 1878.

Amount expended in construction and improvements for six months ending June 30, 1877, December 31, 1877, and June 30, 1878, and total cost of road to June 30, 1878.

Statistics of employes, materials, buildings, etc., and general and income expenses for 6 months, ending June 30, 1877, December 31, 1877, and June 30, 1878.

Accidents, casualties, etc., for 6 months ending June 30, 1877, December 31, 1877, and June 30, 1878.

Funded debt and sinking funds for 6 months ending June 30, 1877, December 31, 1877, and June 30, 1878.

Capital stock for 6 months ending June 30, 1877, December 31, 1877, and June 30, 1878.

List of stocks and bonds of other railroads and corporations owned and held on June 30, 1877, December 31, 1877, and June 30, 1878.

List of locomotives and tenders owned June 30, 1878.

List and description of cars.

A report (in book form) for the half year ending December 31, 1878, called for.

Corporate name and title of company.

Date of incorporation.

Previous name or names.

Date of opening entire main line to public business.

With what other companies consolidated and dates of consolidation.

Length and termini of projected road.

Termini of main line and of branches as constructed.

Location of principal business office where stockholders and directors meet.

Location of offices for transfer of stock.

Location of offices for payment of interest.

Location of general business or operating office.

Present number of stockholders.

Date of annual meeting for election of directors.

Dates of regular meetings of directors.

Date of close of Company's fiscal year.

Officers—Name, title, postoffice address.

Directors—Name, postoffice address, expiration of term.

Capital Stock—

No. of shares, common, preferred, total.

Authorized by law or charter.

Issued for actual cash.

Issued on account of construction.

Issued for other purposes.

Issued for purchase of other lines.

Amount outstanding.

Increase or decrease during the half year.

Par value of shares.

Average price at which stock was disposed of per share.

Rate of interest or dividend on preferred stock.

Funded Debt—

Designation of lien.

Coupon or registered.

Interest, rate per cent per annum.

Date of issue.

Term of years.

Amount.

Amount realized thereon.

Cost of Construction—with items in detail.

Additions and betterments during the half year.

Cost of Rolling Stock—with items in detail

Additions and betterments during the half year.

Earnings—(by months) passenger, freight, mail, express, etc.

Operating Expenses—(by months) in detail.

Operations of the Land Department—Financial.

Receipts and expenses in detail, apportioned—
Congressional lands—All lands.

Expenditures and Revenue—in detail.

General Balance Sheet—at closing of accounts December 31, 1878.

Traffic and Mileage Statistics—Passenger.

Traffic and Mileage Statistics—Freight.

Freight Classification—(2 forms.)

Express and Transportation Companies, Etc.

Brief statement of existing contracts and agreements with express companies, sleeping car or dining car companies, freight or transportation companies, other railroad companies, steamboat or steamship companies or other companies, or persons concerning the transportation of freight or passengers.

Brief statement of the terms and conditions of all existing leases affecting this company.

Operations of the Land Department—Statistical.

(No. of acres during half year.)

Congressional Lands—Acquired (Total at close of half year.)

By U. S. patent.

By patent of State.

By cancellation of contracts.

Congressional Lands—Disposed of—same as above.

For cash.

On time contracts.

As town lots for cash.

As town lots on time contracts.

Miscellaneous } No. of acres during half year.

Lands—Acquired } Total at close of half year.

By purchase.

By cancellation of contracts.

Miscellaneous Lands-- } No. of acres during half year.

Disposed of } Total at close of half year.

For cash.

On time contracts.

As town lots for cash.

As town lots on time contracts.

Characteristics of Road—Miles of track owned, leased,
total.

Length, main line, extension lines, branch lines,
double track, side track.

Miles laid with iron rail—American—foreign.

Miles laid with steel rail—American—foreign.

(Constructed during half year—total at end of
year.)

Grades—Ascending, descending, total.

Curves—Total miles curved line, etc.

Bridges—Stone, iron suspension, iron, other,
wood, etc.

Miscellaneous characteristics.

Description of Rolling Stock—Locomotives, cars, etc.,
in detail.

Miscellaneous Statistics—Fuel used, speed of trains,
accidents, all in detail.

Employees—Number, average rate of pay, character of service.

A report was made for the half year ending June 30th, 1879, in same book form.

Reports for the half year ending December 31, 1879, June 30, 1880, and December 31, 1880, were made in exhaustive detail in book form designated as 8-002.

In addition to these reports there were furnished (on sheet forms sent to us by the U. S. Auditor of Railroad Accounts) reports of revenue, operating and income expenses, tonnage, mileage, etc., for same periods.

Commencing with 1881 and since that year the reports have been made to the Commissioner of Railroads, and for the half years ending June 30th, 1881, December 31st, 1881, June 30th, 1882, December 31st, 1882, June 30th, 1883, and December 31st, 1883, were made in same book form (8-002), and in addition we also furnished upon separate sheets, statements of earnings and expenses by months for the years ending December 31st, 1881, 1882, and 1883.

For the years ending June 30th, 1884, and 1885, and the half year ending December 31st, 1885, reports were made in book form, designated 8-008, the first two periods being accompanied by same statements of earnings and expenses as before.

Commencing with the year ending December 31st, 1885, yearly and half yearly reports were made in book form designated "A" and "B" respectively up to and including the year ending December 31st, 1888, since which date only annual reports have been asked for and made, viz: for the years ending June 30th, 1889 and 1890, 1891, 1892 and 1893.

Mr. Redding—Q. You state throughout this list of reports that they were asked for; by whom were they asked for?

(Same objection.)

A. The officers to whom the reports were made.

Q. To whom were these reports made?

(Same objection.)

A. As stated in the reports, part of the time to the Secretary of the Interior, part of the time to the United States Auditor of Railroad Accounts.

Q. In other words, to various officers of the Government?

(Same objection.)

A. Yes, sir.

Q. Have you in your possession, and can you produce, any of these requests made upon the Southern Pacific Railroad Company by officers of the Government?

(Same objection.)

A. Yes, sir; they are all on file in my office.

Q. Have these annual reports and semi-annual reports of the Southern Pacific Railroad Company been made and forwarded at the direct instigation of the Government of the United States through its officers?

(Same objection.)

A. They have been.

(An adjournment was then taken by consent of counsel until Thursday, September 29th, 1893, at 10:30 A. M.)

San Francisco, September 30, 1893.

DIRECT EXAMINATION OF J. L. WILLCUTT.
(Resumed).

Mr. Redding—Q. Will you state generally in what manner you have been requested or ordered to make reports to the Government of the United States, as Secretary of the Southern Pacific Railroad Company, of its actions, transactions and doings under its land grants of July 27th, 1866, known as the main line grant, and of March 3, 1871, known as the branch line grant?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and upon the further ground that the Southern Pacific Railroad Company therein referred to is not the same corporation nor the same Southern Pacific Railroad Company, defendant in this suit; and upon the further ground that the lands involved in this case were excepted out of the grant to the Southern Pacific Railroad Company by the terms and conditions of the Act of Congress of July 27, 1866, and the Act of Congress of March 3rd 1871, the lands in suit herein having been withdrawn for the benefit of the Atlantic and Pacific Railroad Company and reserved before the Southern Pacific Railroad Company filed its map of definite location; and upon the further ground that the questions of law and of fact at issue in this case have been finally adjudicated by the Supreme Court of the United States, and by the United States Circuit Court for the Southern District of California, in a suit between the same parties, as shown by the records of such decisions which are in evidence herein, and upon the

further ground that it is not the best evidence of the matters sought to be adduced.)

A. In some instances the forms upon which the reports were made have been sent to me direct, and sometimes through the Southern Pacific Company as lessee of various railroad properties.

Q. Have you been able to procure from your archives any original correspondence between the Government of the United States, through its officers, on the one side, and the Southern Pacific Railroad Company, through its officers, on the other side, in relation to the Branch Line grant of March 3, 1871?

(Same objection.)

A. I have considerable of such correspondence upon my files.

Mr. Redding—Defendants offer in evidence an original letter from the Department of the Interior and from the Acting Secretary of the Interior to the President of the Southern Pacific Railroad Company, dated April 3, 1871; and ask that it be marked “Defendants’ Exhibit before the Special Examiner, No. 65;” and ask that the Special Examiner make a certified copy of the same in lieu of the original.

(Same objection.)

(The letter from the Department of the Interior and from the Acting Secretary of the Interior to the President of the Southern Pacific Railroad Company, dated April 3d, 1871, is marked by the Special Examiner “Defendants’ Exhibit before the Special Examiner, No. 65, Stephen Potter, Special Examiner,” and a certified copy thereof is attached here-to.)

Mr. Redding—Defendants offer in evidence original letter from the Department of the Interior to the President of the Southern Pacific Railroad Company, and from the Secretary of the Interior, dated August 5th, 1868, and ask that it be marked “Defendants’ Exhibit before the Special Examiner, No. 66,” and which reads as follows:

Mr. Call—I object, in addition to the grounds above mentioned, to reading matters into the record, where they are offered in evidence as exhibits, on the ground that it encumbers the record, and is superfluous.

Mr. Redding—(Reads): “Sir: I invite your attention to an Act entitled ‘An Act relative to filing reports of Railroad Companies,’ approved June 25, 1868.

“It will be perceived that the reports required by the Act of July 1st, 1862, and the acts amendatory thereof, to be made to the Secretary of the Treasury, are hereafter to ‘be made to the Secretary of the Interior’ on or before the ‘first day of October of each year.’

“Very respectfully,

“Your obt. servant,

“President of the

O. H. BROWNING,

“Southern Pacific R. R. Co.,

Secretary.

“San Francisco, Cal.”

(Same objection.)

(Letter from the Department of the Interior to the President of the Southern Pacific Railroad Company and from the Secretary of the Interior, dated August 5th, 1868, is marked by the Special Examiner “Defendants’ Exhibit before the Special Examiner, No. 66,

Stephen Potter, Special Examiner;" and a certified copy thereof is attached hereto.)

Mr. Redding—Defendants next offer in evidence a letter from the Department of the Interior, dated September 26, 1868, to the President of the Southern Pacific Railroad Company, requesting the said Company to furnish a report of the progress and condition of the road, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 67."

Mr. Call—The admission of the letter is objected to upon the ground that the same is incompetent, immaterial and irrelevant; and upon the further ground that the Southern Pacific Railroad Company therein referred to is not the same corporation, nor the same Southern Pacific Railroad Company, defendant in this suit; and upon the further ground that the lands involved in this case were excepted out of the grant to the Southern Pacific Railroad Company by the terms and conditions of the Act of Congress of July 27, 1866, and the Act of Congress of March 3, 1871, the lands in suit herein having been withdrawn for the benefit of the Atlantic and Pacific Railroad Company and reserved before the Southern Pacific Railroad Company filed its map of definite location; and upon the further ground that the questions of law and of fact at issue in this case have been finally adjudicated by the Supreme Court of the United States, and by the United States Circuit Court for the Southern District of California, in a suit between the same parties, as shown by the records of such decisions, which are in evidence herein; and upon the further ground that it is not the best evidence of the matters sought to be adduced.

(The letter from the Department of the Interior, dated September 26, 1868, to the President of the Southern Pacific Railroad Company, requesting the said company to furnish a report of the progress and condition of the road, is marked by the Special Examiner "Defendants' Exhibit before the Special Examiner, No. 67, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

Mr. Redding—Defendants next offer in evidence letter from the Department of the Interior, dated Washington, August 31st, 1870, directed to the President of the Southern Pacific Railroad Company, calling for reports of the said company to be made to the Interior Department, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 68."

(Same objection.)

(Letter from the Department of the Interior, dated Washington, August 31st, 1870, directed to the President of the Southern Pacific Railroad Company, calling for reports of the said company to be made to the Interior Department, is marked by the Special Examiner "Defendants' Exhibit before the Special Examiner, No. 68, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

Mr. Redding—Defendants next offer in evidence letter from the Secretary of the Interior, Department of the Interior, dated the 1st of September, 1876, addressed to the President of the Southern Pacific Railroad Company, and enclosing a printed circular issued by the department on the 26th of October, 1872, concerning the annual reports of railroad companies,

which the law requires to be filed in the Interior Department, and requesting that reports, in conformity with said printed circular, be made, and ask that a copy of said letter, with the copy of the printed circular attached, be marked "Defendants' Exhibit before the Special Examiner, No. 69."

(Same objection.)

(Letter from the Secretary of the Interior, Department of the Interior, dated the first of September, 1876, and addressed to the President of the Southern Pacific Railroad Company, and enclosing a printed circular issued by the department on the 26th of October, 1872, is marked by the Special Examiner, "Defendants' Exhibit before the Special Examiner, No. 69, Stephen Potter, Special Examiner;" and a certified copy thereof is attached hereto.)

Mr. Redding—Defendants next offer in evidence a series of letters from the Interior Department, and directed to the officers of the Southern Pacific Railroad Company, calling upon them for annual, semi-annual and other reports of the proceedings of said company, and between the dates of July 13, 1878, and May 12, 1881, acknowledging the receipt of said reports in certain instances, and ask that the same be marked "Defendants' Exhibit before the Special Examiner, No. 70," and that the Special Examiner make certified copies of all these exhibits heretofore offered in the shape of this correspondence, and hereafter to be offered, and when certified to be substituted in lieu of the originals.

(Same objection.)

(A series of letters from the Interior Department directed to the officers of the Southern Pacific Railroad

Company, calling upon them for annual, semi-annual and other reports of the proceedings of said Company, dated respectively July 13th, 1878, July 22d, 1878, July 26th, 1878, July 29th, 1878, August 1st, 1878, August 27th, 1878, September 3d, 1878, September 9th, 1878, September 20th, 1878, September 27th, 1878, October 1st, 1878, October 4, 1878, October 7th, 1878, October 10th, 1878, October 12th, 1878, October 15th, 1878, October 16th, 1878, October 17th, 1878, October 19th, 1878, October 22, 1878, October 24, 1878, April 17, 1879, May 17, 1879, September 1, 1879, February 28, 1880, March 18th, 1880, March 22, 1880, May 6, 1880, July 2, 1880, July 22, 1880, September 7, 1880, September 18, 1880, March 1, 1881, March 19, 1881, April 19, 1881, May 12, 1881, May 12, 1881, are marked by the Special Examiner "Defendants' Exhibit before the Special Examiner, No. 70, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

Mr. Redding—Defendants next offer in evidence a letter from the Department of the Interior, Secretary of the Interior, of October 2d, 1868, acknowledging receipt of the annual report of the Southern Pacific Railroad Company, addressed to the President of the Southern Pacific Railroad Company, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 71."

(Same objection.)

(Letter from the Department of the Interior, dated October 2, 1868, acknowledging receipt of the annual report of the Southern Pacific Railroad Company, addressed to the President of the Southern Pacific Railroad Company, is marked by the Special Examiner,

"Defendants' Exhibit before the Special Examiner, No. 71, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

Mr. Redding—Defendants next offer in evidence letter from the Department of the Interior, office of Commissioner of Railroads, dated Washington, D. C., November 2d, 1881, to the Secretary of the Southern Pacific Railroad Company, and signed by Jos. K. McCammon, Commissioner, acknowledging the receipt of semi-annual report of the Southern Pacific Railroad Company, for the six months ending June 30th, 1881, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 72."

(Same objection.)

(Letter from the Department of the Interior, Office of Commissioner of Railroads, dated Washington, D.C., November 2d, 1881, to the Secretary of the Southern Pacific Railroad Company, signed by Jos. K. McCammon, Commissioner, acknowledging the receipt of semi-annual report of the Southern Pacific Railroad Company for the six months ending June 30th, 1881, is marked by the Special Examiner "Defendants' Exhibit before the Special Examiner, No. 72, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

Mr. Redding—Defendants next offer in evidence letter from the Department of the Interior, office of Commissioner of Railroads, dated Washington, D. C., February 1st, 1882, signed by the Commissioner, and addressed to the Secretary of the Southern Pacific Railroad Company, acknowledging the statistical enclosures of annual reports for 1880, and ask that it be

marked "Defendants' Exhibit before the Special Examiner, No. 73."

(Same objection.)

(Letter from the Department of the Interior, office of Commissioner of Railroads, dated Washington, D. C., February 1st, 1882, signed Jos. K. McCammon, Commissioner, per W. M. F., addressed to the Secretary of the Southern Pacific Railroad Company, is marked by the Special Examiner "Defendants' Exhibit before the Special Examiner, No. 73, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

Mr. Redding—Defendants next offer in evidence letter from the Department of the Interior, office of Commissioner of Railroads, dated Washington, D. C., May 20th, 1882, addressed to the Secretary of the Southern Pacific Railroad Company, acknowledging receipt of the report for the half year ending December 31st, 1881, of the Southern Pacific Railroad Company, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 74."

(Same objection.)

(Letter from the Department of the Interior, office of Commissioner of Railroads, dated Washington, D. C., May 20, 1882, addressed to the Secretary of the Southern Pacific Railroad Company, acknowledging receipt of the report for the half year ending December 31st, 1881, of the Southern Pacific Railroad Company, is marked by the Special Examiner "Defendants' Exhibit before the Special Examiner, No. 74, Stephen Potter, Special Examiner;" and a certified copy thereof is attached hereto.)

Mr. Redding—Defendants next offer in evidence letter from the Department of the Interior, office of Commissioner of Railroads, Washington, D. C., November 9, 1882, signed by the Commissioner, and addressed to the Secretary of the Southern Pacific Railroad Company, acknowledging receipt of the report of the Southern Pacific Railroad Company, for the half year ending June 30th, 1882, and ask that it be marked “Defendants’ Exhibit before the Special Examiner, No. 75.”)

(Same objection.)

(Letter from the Department of the Interior, office of Commissioner of Railroads, dated Washington, D. C., November 9, 1882, signed William H. Armstrong, Commissioner, per F. B. P., addressed to the Secretary of the Southern Pacific Railroad Company, is marked by the Special Examiner, “Defendants’ Exhibit before the Special Examiner, No. 75, Stephen Potter, Special Examiner,” and a certified copy thereof is attached hereto.)

Mr. Redding—Defendants next offer in evidence letter from the Department of the Interior, office of Commissioner of Railroads, dated Washington, D. C., August 11, 1883, and addressed to the Secretary of the Southern Pacific Railroad Company, acknowledging receipt of the report of the Southern Pacific Railroad Company for the half year ending December 31, 1882, signed by the Commissioner, and ask that it be marked “Defendants’ Exhibit before the Special Examiner, No. 76.”

(Same objection.)

(Letter from the Department of the Interior, office of Commissioner of Railroads, dated Washington, D.

C., August 11, 1883, addressed to the Secretary of the Southern Pacific Railroad Company, acknowledging receipt of report of the Southern Pacific Railroad Company for the half year ending December 31st, 1882, signed W. H. Armstrong, Commissioner, per T. J. Walker, is marked by the Special Examiner, "Defendants' Exhibit before the Special Examiner, No. 76, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

Mr. Redding—Defendants next offer in evidence letter from the Department of the Interior, office of Commissioner of Railroads, dated Washington, April 3d, 1884, addressed to the Secretary of the Southern Pacific Railroad Company, and signed by the Commissioner, instructing the Southern Pacific Railroad Company to render an annual report in lieu of the half yearly reports heretofore required, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 77."

(Same objection.)

(Letter from the Department of the Interior, office of Commissioner of Railroads, dated Washington, April 3d, 1884, addressed to the Secretary of the Southern Pacific Railroad Company, and signed F. B. Pickerill for the Commissioner, is marked by the Special Examiner "Defendants' Exhibit before the Special Examiner, No. 77, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

Mr. Redding—Defendants next offer in evidence letter from the Department of the Interior, office of Commissioner of Railroads, dated Washington, Sep-

tember 6, 1884, addressed to the Secretary of the Southern Pacific Railroad Company, and signed by Thomas J. Walker, in charge of office in the Commissioner's absence, acknowledging the receipt of the report of the Southern Pacific Railroad Company for 1884, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 78."

(Same objection.)

(Letter from the Department of the Interior, office of Commissioner of Railroads, dated Washington, September 6, 1884, addressed to the Secretary of the Southern Pacific Railroad Company, signed by Thomas J. Walker, in charge of office in the Commissioner's absence, is marked by the Special Examiner, "Defendants' Exhibit before the Special Examiner, No. 78, Stephen Potter, Special Examiner," and a certified copy hereof is attached hereto.)

Mr. Redding—Defendants next offer in evidence letter from the Department of the Interior, office of Commissioner of Railroads, dated Washington, February 10th, 1885, signed by the Commissioner, and addressed to the Secretary of the Southern Pacific Railroad Company, acknowledging the two full sets of reports of the Southern Pacific Railroad Company, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 79."

(Same objection.)

(Letter from the Department of the Interior, office of Commissioner of Railroads, dated Washington, February 10th, 1885, signed F. B. Pickerill, and addressed to the Secretary of the Southern Pacific Railroad Company, is marked by the Special Examiner,

"Defendants' Exhibit before the Special Examiner, No. 79, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

Mr. Redding—Defendants next offer in evidence a letter from the office of the Commissioner of Railroads, Department of the Interior, dated Washington, May 22, 1885, addressed to J. L. Willcutt, Secretary of the Southern Pacific Railroad Company, signed by the Commissioner stating that the obligations of the Southern Pacific Railroad Company of California to the United States Government are in no manner affected by any leases, and that therefore the reports and statements of operations of the company shall be sent on hereafter as heretofore, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 80."

(Same objection.)

(Letter from the Department of the Interior, office of Commissioner of Railroads, dated Washington, May 22, 1885, addressed to J. L. Willcutt, Secretary of the Southern Pacific Railroad Company, signed by J. E. Johnston, Commissioner, is marked by the Special Examiner "Defendants' Exhibit before the Special Examiner, No. 80, Stephen Potter, Special Examiner;" a certified copy thereof is attached hereto.)

Mr. Redding—Defendants next offer in evidence a letter from the Department of the Interior, office of Commissioner of Railroads, dated Washington, December 21, 1885, addressed to the President of the Southern Pacific Railroad Company, and enclosing rules established by the Secretary of the Interior on the subject of the reports and accounts to be furnished the In-

terior Department by the Southern Pacific Railroad Company, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 81."

(Same objection.)

(Letter from the Department of the Interior, office of Commissioner of Railroads, dated Washington, December 21, 1885, addressed to the President of the Southern Pacific Railroad Company, and signed J. E. Johnston, Commissioner, enclosing rules established by the Secretary of the Interior on the subject of the reports and accounts to be furnished the Interior Department by the Southern Pacific Railroad Company, together with the enclosure, is marked by the Special Examiner "Defendant's Exhibit before the Speial Examiner, No. 81, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

Mr. Redding—Defendants next offer in evidence letter from the Department of the Interior, office of Commissioner of Railroads, dated Washington, August 30, 1886, and signed by the Commissioner in charge, addressed to the Secretary of the Southern Pacific Railroad Company, acknowledging the receipts of reports for that year ending June 30th, 1886, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 82."

(Same objection.)

(Letter from Department of the Interior, office of Commissioner of Railroads, dated Washington, August 30th, 1886, addressed to the President of the Southern Pacific Railroad Company, and signed "Very respectfully, in absence of the Commissioner, Edward Her-

rick, in charge," is marked by the Special Examiner "Defendants' Exhibit before the Special Examiner, No. 82, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

Mr. Redding—Defendants next offer in evidence letter from the Department of the Interior, office of Commissioner of Railroads, dated Washington, D. C., May 7th, 1887, signed by the Commissioner, addressed to the Secretary of the Southern Pacific Railroad Company, and acknowledging the receipt of reports of the Southern Pacific Railroad Company, Forms "A" and "B," for December 31st, 1886.

(Same objection.)

(Letter from the Department of the Interior, office of Commissioner of Railroads, dated Washington, May 7th, 1887, addressed to the Secretary of the Southern Pacific Railroad Company, signed "Edward Herrick, for the Commissioner," is marked by the Special Examiner "Defendants' Exhibit before the Special Examiner, No. 83," and a certified copy thereof is attached hereto.)

Mr. Redding—Q. Mr. Willeutt, have you received instructions from the Department of the Interior, enclosing blank forms for filling in and forwarding to the Interior Department of the United States, which forms when filled in are to show the reports of the proceedings and transactions of the Southern Pacific Railroad Company for the years indicated.

(Same objection.)

A. I have since the year 1878; prior to that I have not; I had a written form of report up to and including the year 1877; since then they have furnished me with blanks.

Q. Has the Interior Department from time to time changed the forms of those blanks sent to your office?

(Same objection.)

A. Yes, sir.

Mr. Redding—Defendants next offer in evidence letter dated May 7, 1887, from the Department of the Interior, office of Commissioner of Railroads, addressed to J. L. Willeutt, Esq., Secretary of the Southern Pacific Railroad Company, signed by Edward Herrick, for the Commissioner, enclosing a supply of blank forms, as follows: "3 forms 8-002," and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 84."

(Objected to by Mr. Call as incompetent, immaterial and irrelevant, and upon the further ground that the Southern Pacific Railroad Company therein referred to is not the same corporation, nor the same Southern Pacific Railroad Company, defendant in this suit; and upon the further ground that the lands involved in this case were excepted out of the grant to the Southern Pacific Railroad Company by the terms and conditions of the Act of Congress of July 27, 1866, and the Act of Congress of March 3, 1871, the lands in suit herein having been withdrawn for the benefit of the Atlantic & Pacific Railroad Company and reserved before the Southern Pacific Railroad Company filed its map of definite location; and upon the further ground that the questions of law and of fact at issue in this case have been finally adjudicated by the Supreme Court of the United States, and by the United States Circuit Court for the Southern District of California, in a suit between the same parties, as shown by the records of

such decisions which are in evidence herein; and upon the further ground that it is not the best evidence of the matters sought to be adduced; and upon the further ground that it is not an official letter by any officer of the United States authorized to send such letter.)

(Letter dated Washington, May 7, 1887, from the Department of the Interior, office of Commissioner of Railroads, addressed to the Secretary of the Southern Pacific Railroad Company, and signed by Edward Herrick, for the Commissioner, is marked by the Special Examiner "Defendants' Exhibit before the Special Examiner, No. 84, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

Mr. Redding—Q. Were three forms 8-002 enclosed you in such letter of May 7th, 1887?

(Same objection.)

A. Probably sent in a separate package; they were received by me.

Q. Did you as Secretary of the Southern Pacific Railroad Company make out the semi-annual reports on said forms?

(Same objection.)

A. I did.

Q. And forward them?

(Same objection.)

A. I did.

Q. Have you from year to year, as indicated in these letters, and at the times indicated in these letters, which letters show the receipt of these reports, made out reports in accordance with the forms fur-

nished you as Secretary of the Southern Pacific Railroad Company by the Interior Department?

(Same objection.)

A. Yes, sir.

Mr. Call—I want to say here that as to any letters which are signed by the Secretary of the Interior, or his proper assistant, or Acting Secretary of the Interior, I have no objections to the Special Examiner making certified copies to stand in lieu of the originals; but as to any letters here which are not signed in that manner I wish the originals to be introduced in evidence, and I shall not consent to copies being made of them. That includes the letter just offered, dated May 7th, 1887.

Mr. Redding—We have no objection to letting the original letter go in.

Defendants next offer in evidence letter from the Department of the Interior, office of Commissioner of Railroads, dated Washington, D. C., September 17, 1887, to the Secretary of the Southern Pacific Railroad Co., signed by Edward Herrick, for the Commissioner, acknowledging receipt of report, Form B, for June 30th, 1887.

(Objected to by Mr. Call as incompetent, immaterial and irrelevant, and upon the further ground that the Southern Pacific Railroad Company therein referred to is not the same corporation nor the same Southern Pacific Railroad Company, defendant in this suit; and upon the further ground that the lands involved in this case were excepted out of the grant to the Southern Pacific Railroad Company by the terms and conditions of the Act of Congress of July 27, 1866, and

the Act of Congress of March 3, 1871, the lands in suit herein having been withdrawn for the benefit of the Atlantic & Pacific Railroad Company and reserved before the Southern Pacific Railroad Company filed its map of definite location; and upon the further ground that the questions of law and of fact at issue in this case have been finally adjudicated by the Supreme Court of the United States, and by the United States Circuit Court for the Southern District of California, in a suit between the same parties, as shown by the records of such decisions, which are in evidence herein; and upon the further ground that it is not the best evidence of the matters sought to be adduced; and upon the further ground that it is not an official letter by any officer of the United States authorized to send such letter; and also upon the further ground that the letter offered is not signed by any officer of the United States.)

(Letter from the Department of the Interior, office of Commissioner of Railroads, dated Washington, September 17, 1887, addressed to the Secretary of the Southern Pacific Railroad Company, and signed Edward Herrick, for the Commissioner, is marked by the Special Examiner, "Defendants' Exhibit before the Special Examiner, No. 85, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

Mr. Redding—Defendants next offer in evidence a letter from the Department of the Interior, office of Commissioner of Railroads, dated Washington, D. C., April 2, 1888, addressed to the Secretary of the Southern Pacific Railroad Company, signed by Edward Her-

rick, for the Commissioner, acknowledging receipt of reports A and B, for December 31, 1887, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 86."

(Same objection.)

(Letter from the Department of the Interior, office of Commissioner of Railroads, dated Washington, April 2, 1887, addressed to the Secretary of the Southern Pacific Railroad Company, signed by Edward Herrick, for the Commissioner, is marked by the Special Examiner "Defendants' Exhibit before the Special Examiner, No. 86, Stephen Potter, Special Examiner;" and a certified copy thereof is attached hereto.)

Mr. Redding—Defendants next offer in evidence a letter from the Department of the Interior, office of Commissioner of Railroads, dated Washington, D. C., June 4, 1889, signed by Edward Herrick, in charge, addressed to the Secretary of the Southern Pacific Railroad Company, acknowledging receipt of reports, Form A, for the year ending December 31, 1888, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 87."

(Same objection.)

(Letter from the Department of the Interior, office of Commissioner of Railroads, Washington, D. C., June 4, 1889, addressed to the Secretary of the Southern Pacific Railroad Company, signed by Edward Herrick, in charge, is marked by the Special Examiner "Defendants' Exhibit before the Special Examiner, No. 87, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

Mr. Redding—Q. Since the year 1889, to whom have the reports of the Southern Pacific Railroad Company to the Interior Department of the United States been acknowledged?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and upon the further ground that the Southern Pacific Railroad Company therein referred to is not the same corporation nor the same Southern Pacific Railroad Company, defendant in this suit; and upon the further ground that the lands involved in this case were excepted out of the grant to the Southern Pacific Railroad Company by the terms and conditions of the Act of Congress of July 27, 1866, and the Act of Congress of March 3, 1871, the lands in suit herein having been withdrawn for the benefit of the Atlantic & Pacific Railroad Company, and reserved before the Southern Pacific Railroad Company filed its map of definite location; and upon the further ground that the questions of law and of fact at issue in this case have been finally adjudicated by the Supreme Court of the United States, and by the United States Circuit Court for the Southern District of California, in a suit between the same parties, as shown by the records of such decisions, which are in evidence herein; and upon the further ground that it is not the best evidence of the matters sought to be adduced.)

A. Acknowledgment has been made to Mr. G. L. Lansing, Secretary of the Southern Pacific Company in connection with an acknowledgment of a report of the Southern Pacific and the Central Pacific Railroad Companies; one acknowledgment has been made for the three reports.

Mr. Redding—Defendants give notice that they have made requests for certified copies of the reports on file in the Interior Department, and have asked the Interior Department to make these copies, and forward them at their earliest convenience to the Special Examiner in this case, Mr. Stephen Potter, to his address, San Francisco, or to the Standing Examiner, Mr. E. H. Lamme, Los Angeles, California; and that when the same are made and forwarded by the Interior Department, duly certified, that they will be offered in evidence by the defendants in this action.

Defendants offer in evidence the Articles of Consolidation and Amalgamation, dated December 17th, 1874, between the Southern Pacific Railroad Company and the Los Angeles and San Pedro Railroad Company, and ask that the Special Examiner make a certified copy of the Articles in lieu of the original, and that the same be marked "Defendants' Exhibit before the Special Examiner, No. 88."

(Articles of Association, Amalgamation and Consolidation of the Southern Pacific Railroad Company, and the Los Angeles and San Pedro Railroad Company, dated December 17, 1874, filed in the office of Secretary of State December 18, 1875, is marked by the Special Examiner "Defendants' Exhibit before the Special Examiner, No. 88, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

Mr. Redding—Defendants next offer in evidence Articles of Amalgamation and Consolidation of the Southern Pacific Railroad Company with other Railroad Companies; dated May 4th, 1888, and ask that

the same be marked "Defendants' Exhibit before the Special Examiner, No. 89," and that the Special Examiner certify to a printed copy of the same.

(Articles of Association, Incorporation, Amalgamation and Consolidation of the Southern Pacific Railroad Company with the San Jose and Almaden, and sixteen other Railroad Companies, dated May 4th, 1888, is marked by the Special Examiner "Defendants' Exhibit before the Special Examiner, No. 89, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

Q. Will you state, as Secretary of the Southern Pacific Railroad Company, whether the stock of the Southern Pacific Railroad Company was changed in these amalgamations and consolidations herein referred to, or whether it remained the same?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and upon the further ground that the Southern Pacific Railroad Company therein referred to is not the same corporation nor the same Southern Pacific Railroad Company, defendant in this suit; and upon the further ground that the lands involved in this case were excepted out of the grant to the Southern Pacific Railroad Company by the terms and conditions of the Act of Congress of July 27, 1866, and the Act of Congress of March 3, 1871, the lands in suit herein having been withdrawn for the benefit of the Atlantic & Pacific Railroad Company and reserved before the Southern Pacific Railroad Company filed its map of definite location; and upon the further ground that the questions of law and of fact at

issue in this case have been finally adjudicated by the Supreme Court of the United States, and by the United States Circuit Court for the Southern District of California, in a suit between the same parties, as shown by the records of such decisions, which are in evidence herein; and upon the further ground that it is not the best evidence of the matters sought to be adduced.)

A. It remains the same.

Q. Has the business of the Southern Pacific Railroad Company, since December 2d, 1865, been transacted as one main corporation down to the present time?

(Same objection.)

A. It has.

Q. How long have you had charge of the books of this corporation?

(Same objection.)

A. Since October, 1870.

Q. Have you been its Secretary ever since?

(Same objection.)

A. I have.

Q. Do you know whether or not the identity of the Southern Pacific Railroad Company, as it existed at that time, has been preserved down to the present time?

(Same objection.)

A. It has.

Q. Have the accounts of this company been kept continuously by you so far as your duties of Secretary apply to the accounts and finances of this company?

(Same objection.)

A. I have.

Q. Do you know as a fact whether or not the Southern Pacific Railroad Company has forwarded to the Interior Department, to the Secretary of the Interior of the United States, to the Auditor of Railroad Accounts of the United States, to the Commissioners of Railroads of the United States, full reports giving full answers to all requests and demands made upon the company by those several officers of the Government?

(Same objection.)

A. Yes, sir, I do.

Q. Were these reports made under your supervision and by you as Secretary?

(Same objection.)

A. Yes, sir.

Q. Do you know that the information therein set forth is authentic and correct excerpts from your books and from the business of the Company?

(Same objection.)

A. Yes, sir.

Q. Did you compare them before they were sent in each instance, and have them compared?

(Same objection.)

A. The matter was furnished by the heads of the different departments to me.

Q. Did you compare the information furnished with the reports as sent by you, or have it compared?

(Same objection.)

A. I had it compared.

Q. Did these reports contain from time to time the names of the stockholders of the Southern Pacific Railroad Company as they have existed for each

year, from the date of the first report down to the date of the last report?

(Same objection.)

A. I think that has been one of the requirements in every form of report which has been made.

Q. Do these reports also include the names of the Directors in each year.

(Same objection.)

A. Yes, sir.

Q. The amount of the capital stock of the corporation from time to time?

(Same objection.)

A. Yes, sir.

Q. The complainant in the case at bar alleges in paragraph sixteen of his bill of complaint that the defendants D. O. Mills and G. L. Lansing have a mortgage or deed of trust from the defendant, the Southern Pacific Railroad Company, covering the lands involved in this suit to secure the payment of certain indebtedness of said Company to them as trustee, dated April 1st, 1875; is there such a mortgage in existence?

(Same objection.)

A. There is (producing).

Mr. Redding—Defendants offer in evidence the original trust mortgage of the Southern Pacific Railroad Company to D. O. Mills and Lloyd Tevis, dated April 1st, 1875, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 90," and with the usual understanding that a certified copy of the original may be substituted in lieu of the original.

Mr. Call—I have no objection to a certified copy being made in lieu of the original, subject to the same objections.

(Same objection.)

(Trust Mortgage, Southern Pacific Railroad Company to D. O. Mills and Lloyd Tevis, trustees, dated April 1st, 1875, is marked by the Special Examiner "Defendants' Exhibit before the Special Examiner, No. 90, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

Mr. Redding—Q. Will you state from the books of the Southern Pacific Railroad Company what the amount of the bonds is that was issued under this mortgage?

(Same objection.)

A. \$39,285,000, a portion of which has been redeemed.

Q. What is the amount outstanding at present?

(Same objection.)

A. \$31,293,500.

Q. Are the bonds issued under this mortgage negotiable?

(Same objection.)

A. Yes, sir.

Q. Have they passed into the hands of third parties, for value received?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant; and upon the further ground that the Southern Pacific Railroad Company therein referred to is not the same corporation, nor the same Southern Pacific Railroad Company, defendant in this suit; and upon the further ground that the

lands involved in this case were excepted out of the grant to the Southern Pacific Railroad Company by the terms and conditions of the Act of Congress of July 27, 1866, and the Act of Congress of March 3, 1871, the lands in suit herein having been withdrawn for the benefit of the Atlantic & Pacific Railroad Company, and reserved before the Southern Pacific Railroad Company filed its map of definite location; and upon the further ground that the questions of law and of fact at issue in this case have been finally adjudicated by the Supreme Court of the United States, and by the United States Circuit Court for the Southern District of California, in a suit between the same parties, as shown by the records of such decisions, which are in evidence herein; and upon the further ground that it is not the best evidence of the matters sought to be adduced; and upon the further ground that the question calls for the opinion of the witness; and upon the further ground that the mortgage on its face discloses that it only purports to cover lands which were granted to the Southern Pacific Railroad Company; and upon the further ground that the alleged purchasers of such bonds are conclusively presumed to take notice of the terms of said mortgage and of the terms and conditions of the grant to said company by the Acts of March 3d, 1871, and July 27, 1866, and are also required to take notice of the records of the United States Land Office in the district where such lands are situated, and the records of the General Land Office, at Washington, all of which discloses that the Southern Pacific Railroad Company had no interest in or title to said lands.)

A. They have.

(An adjournment was then taken by consent of counsel, until Monday, October 2, 1893, at 10 A. M.)

San Francisco, October 2nd, 1893.

DIRECT EXAMINATION OF J. L. WILLCUTT.

(Resumed.)

Mr. Call—We do not dispute the proposition that the defendant Railroad Company made reports to the Secretary of the Interior, as required by law, and I will make the admission that the Southern Pacific Railroad Company, organized and created by the articles of incorporation of 1865, and articles of consolidation of 1870, 1873, 1874, and 1888, respectively, and in evidence herein, marked "Master's Exhibits Nos. 1, 2, and 3, and Defendants' Exhibits before the Special Examiner, Nos. 88 and 89, did in pursuance of written demands from the Secretary of the Interior, make annual and semi-annual reports, and other reports, to the Secretary of the Interior of the United States, from the year 1870 down to and including 1893, and between the years 1878 and 1881, to the Auditor of Railroad Accounts, created under the Act of Congress, approved March 19, 1878, and commencing with 1881, and since that year to the Commissioner of Railroads created by General Appropriation Act approved March 3, 1881; and that those reports set forth the transactions, doings and acts performed by the defendant Railroad Company under the terms of the Act of Congress of July 27th, 1866, and March 3,

1871, making grants to Southern Pacific Railroad Company; that said reports set forth the names of stockholders and Boards of Directors, amounts of capital stock and statement of all contracts, consolidations and agreements entered into with other corporations, companies and persons, and substantially as stated in the testimony of Joseph L. Willett, given in this case on September 28th, 1893, before Special Examiner in Chancery Potter, and that such reports were received by the Secretary of the Interior, the Auditor of Railroad Accounts and Commissioner of Railroads of the United States, respectively, and were filed in the Interior Department; and the matters contained in such reports were duly reported by the Auditor of Railroad Accounts and Commissioner of Railroads to the Secretary of the Interior, in their printed and published reports, as required by law. As no controversy is made in regard to this matter, and as I deem the matter entirely irrelevant and immaterial to the issues in this case, I have made a record of this admission in order to remove any excuse or ground for incumbering the record with documentary and other evidence to establish such facts, which, as I am informed, may amount to several thousand pages.

Mr. Call—In addition to the objections stated to the last question asked of the witness on September 30, I make the following additional objections to said question: The question is objected to as irrelevant, immaterial and incompetent, and not the best evidence, and upon the further ground that the lands in suit herein were excepted out of the grant to the Southern Pacific Railroad Company, made

by the Act of Congress of March 3rd, 1871, by the terms and conditions of said Act; and upon the further ground that the lands in suit herein were withdrawn for the Atlantic and Pacific Railroad Company, and were reserved before the Southern Pacific Railroad Company filed its map of definite location; and upon the further ground that the matters in issue in this suit have been finally decided and adjudicated by the Supreme Court of the United States and the United States Circuit Court for the Southern District of California, as shown by the records of such decisions in evidence herein; and upon the further ground that the Southern Pacific Railroad Company, to which the grant was made by the Act of Congress of March 3, 1871, by entering into the articles of consolidation and amalgamation in evidence herein, marked "Master's Exhibits 1, 2 and 3, and Defendant's Exhibit before the Special Examiner, Nos. 88 and 89, has surrendered to the United States all interests in these lands and did thereby surrender to the United States in each case of consolidation all right to earn such lands by constructing a railroad; and upon the further ground that the mortgage of 1875 to Lloyd Tevis and D. O. Mills, trustees, shows upon its face that it does not purport to cover lands not granted to the Southern Pacific Railroad Company; and upon the further ground that the records of the Interior Department and of the United States Land Office at Los Angeles, and the United States Land Office at San Francisco, and the records of the office of the Secretary of State for California, and the public laws of the United States and of California, show that the Southern Pacific Railroad

Company defendant herein has no interest in these lands.

Mr. Call—I will consent that certified copies may be made of all the letters offered in evidence on September 30th, 1893, which may stand in lieu of the originals, subject to the objections made to the originals, and that such copies be certified in the usual manner by the Special Examiner.

Mr. Redding—Q. Have all these bonds been issued that are now outstanding prior to the year 1890, so far as your books show?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence, and upon the further ground that the lands in suit herein were excepted out of the grant to the Southern Pacific Railroad Company, made by the Act of Congress of March 3, 1871, by the terms and conditions of said Act, and upon the further ground that the lands in suit herein were withdrawn for the Atlantic and Pacific Railroad Company, and were reserved before the Southern Pacific Railroad Company filed its map of definite location; and upon the further ground that the matters in issue in this suit have been finally decided and adjudicated by the Supreme Court of the United States, and the United States Circuit Court for the Southern District of California, as shown by the records of such decisions in evidence herein; and upon the further ground that the Southern Pacific Railroad Company, to which the grant was made by the Act of Congress of March 3, 1871, by entering into the articles of consolidation and amalgamation in evidence herein, marked "Master's Ex-

hibits 1, 2 and 3, and Defendants' Exhibits before the Special Examiner, Nos. 88 and 89," has surrendered to the United States all interest in these lands and did thereby surrender to the United States in each case of consolidation all right to earn such lands by constructing a railroad; and upon the further ground that the mortgage of 1875 to Lloyd Tevis and D. O. Mills, Trustees, shows upon its face that it does not purport to cover lands not granted to the Southern Pacific Railroad Company; and upon the further ground that the records of the Interior Department, and of the United States Land Office at Los Angeles, and the United States Land Office at San Francisco, and the records of the office of the Secretary of State for California, and the public laws of the United States and of California, show that the Southern Pacific Railroad Company, defendant herein, has no interest in these lands.

A. To the best of my recollection without looking at my records.

Q. Have you ascertained from the records in this case and from the Land Department how much land is involved in this litigation?

(Same objection.)

A. Yes, sir.

Q. How many acres are there involved?

(Same objection.)

A. About 651,750 acres.

Q. From what sources have you obtained this information?

(Same objection.)

A. From the Land Department.

Q. How many acres of land, so far as the grant of March 3, 1871, is concerned, are included in these two clauses of the mortgage of 1875, marked "Defendants' Exhibit before the Special Examiner, No. 90," which reads as follows: "And, therefore, this indenture further witnesseth, that the said party of the first part, for the purpose of securing a payment of the sums of money mentioned in said bonds, and the interest thereon, and in consideration of the premises, and also for and in consideration of the sum of one dollar, to the said party of the first part in hand paid, by the parties of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, released, enfeoffed, conveyed, confirmed, and by these presents does grant, bargain, sell, release, enfeoff, convey and confirm unto the said parties of the second part, as trustees, and to their successors and survivors, and their assigns, forever, all and singular, the said several sections of land so as aforesaid granted by said Acts of Congress; and also all estate, right, title, interest, claim and demand whatsoever at law or in equity of, in or to the same, or any part or parcel thereof, which the said party of the first part now has, holds, owns or is entitled to, or hereafter may or shall acquire, have, hold, own or be or become entitled to by force or virtue of the said Acts of Congress?"

(Same objection.)

Mr. Call—I do not see that that describes any land.

Mr. Redding—That is a matter of opinion.

A. 4,400,000 acres.

Q. Then what is the proportion of the indebtedness secured by this mortgage which would be borne by the lands involved in this suit?

(Same objection.)

A. About one-sixth.

Q. Do the books of your company and do these mortgages show that the lands in controversy have been included as an asset for the payment of this mortgage?

(Same objection.)

A. They do.

Q. Do the representations made by the Southern Pacific Railroad Company to the purchasers and holders of these bonds and to the mortgagees under this mortgage show that the lands in controversy in this suit were included as a portion of the assets upon which to pay the indebtedness created by this mortgage and these bonds?

(Same objection.)

A. Yes, sir.

Q. Have you as Secretary of the Southern Pacific Railroad Company made these representations to the purchasers of these bonds?

(Same objection.)

A. I personally have had no negotiations with parties for the purchase of them.

Q. Do you know whether the Southern Pacific Railroad Company has made these representations?

(Same objection.)

A. It has.

Q. What has been done with the money received by the sale of these bonds—that is to say, so far as the Southern Pacific Railroad Company shows upon the books of the Secretary what application of these funds has been made?

(Same objection.)

A. Paying the indebtedness of the company in various ways.

Q. Does that include the payment for the work of construction?

(Same objection.)

A. The most of the construction has been paid for in bonds.

Q. Does your term, "the indebtedness of the company," include all forms and kinds of indebtedness that the company is put to in the transaction of its business?

(Same objection.)

A. It does.

Q. Do you know that the Southern Pacific Railroad Company has received the money, or its equivalent, for the bonds issued and the bonds now outstanding?

(Same objection.)

Mr. Call—The witness has just stated that the bonds were issued for construction.

Mr. Redding—Yes, I understand that.

The Witness—That is, a large portion of the bonds were; there have been some few that were sold for cash, but not to any great extent.

A. The Southern Pacific Railroad Company has not been interested in the proceeds of the bonds; the bonds were issued to the Pacific Improvement Company; and the sales have been made by the Pacific Improvement Company; the larger portion of the bonds, so far as sales have been made by the Company direct it has received the money for the sales of bonds which have been actually made by the Company.

Mr. Redding—Defendants offer in evidence a certified copy of a deed of trust, dated August 25th, 1888, between the Southern Pacific Railroad Company of the first part; the Southern Pacific Company of the second part, and Central Trust Company of New York of the third part; and ask that the same be marked "Defendants' Exhibit before the Special Examiner, No. 91," and that the Special Examiner make a certified copy of this certified copy in lieu of the one now offered, in accordance with our stipulation upon these matters.

(Objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence, and upon the further ground that the lands in suit herein were excepted out of the grant to the Southern Pacific Railroad Company made by the Act of Congress of March 3rd, 1871, by the terms and conditions of said Act; and upon the further ground, that the lands in suit herein were withdrawn for the Atlantic and Pacific Railroad Company, and were reserved before the Southern Pacific Railroad Company filed its map of definite location; and upon the further ground, that the matters in issue in this suit have been finally decided and adjudicated by the Supreme Court of the United States, and the United States Circuit Court for the Southern District of California, as shown by the records of such decisions in evidence herein; and upon the further ground, that the Southern Pacific Railroad Company to which the grant was made by the Act of Congress of March 3, 1871, by entering into the articles of consolidation and amalgamation in evidence herein, marked "Master's Exhibits 1, 2 and 3, and Defendants' Exhibits before the

Special Examiner, Nos. 88 and 89," has surrendered to the United States all interests in these lands, and did thereby surrender to the United States in each case of consolidation, all right to earn such lands by constructing a railroad, and upon the further ground, that the mortgage of 1875 to Lloyd Tevis and D. O. Mills, Trustees, shows upon its face that it does not purport to cover lands not granted to the Southern Pacific Railroad Company; and upon the further ground, that the records of the Interior Department, and of the United States Land Office at Los Angeles, and the United States Land Office at San Francisco, and the records of the office of the Secretary of State of California, and the public laws of the United States and of California, show that the Southern Pacific Railroad Company, defendant herein, has no interest in these lands; and upon the further ground that the pretended mortgage or deed of trust referred to does not purport to cover any of the lands in suit herein; and upon the further ground that the said pretended mortgage or deed of trust is null and void, and of no effect so far as it is pretended that it covers or includes any of the lands in suit herein, for that there is no description given of any lands, or any reference made to any other instrument for any such description; and upon the further ground that the Central Trust Company is a corporation, organized under the laws of the State of New York; as appears from said pretended deed of trust or mortgage, and is a non-resident of the State of California and of the Southern District of California, and is not a party defendant in this suit; and upon the further ground that said Central Trust

Company has no interest in the subject matter of this suit.)

(Certified copy of deed of trust dated August 25th, 1888, between the Southern Pacific Railroad Company of the first part, the Southern Pacific Company of the second part, and Central Trust Company of New York of the third part, is marked by the Special Examiner "Defendants' Exhibit before the Special Examiner, No. 91, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

Q. State what your mortgage of 1888, as evidenced by the last exhibit, purports to cover?

(Same objection.)

A. A first mortgage upon certain new lines as therein described, and a second mortgage upon the old lines and all the lands that have been granted to the company under its various land grants.

Q. Do you know whether or not, as a matter of fact, the intention of the Southern Pacific Railroad Company in executing this mortgage, was to secure a second mortgage upon the land grant to it of March 3, 1871?

(Same objection.)

A. It was.

Q. What do you mean by a first mortgage upon new lines as distinguished from the old lines?

(Same objection.)

A. Lines that were not in existence at the time of the making of the mortgage of 1875. Lines which have since been laid out and built.

Q. From the books of the Southern Pacific Railroad Company, what do you ascertain to be the

amount of outstanding bonds negotiated under this second mortgage of August, 1888?

(Same objection.)

A. \$12,932,000.

Q. Is that the amount outstanding or the amount of issuance?

(Same objection.)

A. Both; there have been no redemptions.

Q. Referring to Exhibit No. 90, otherwise known as trust mortgage of 1875, will you state whether or not the Southern Pacific Railroad Company, mentioned in the second line of the first page of said mortgage, and mentioned throughout said mortgage, and finally mentioned on page 8 in the following language: "In witness whereof, the said Southern Pacific Railroad Company has caused these presents to be signed by its President and Secretary, and sealed with its corporate seal, and the above parties of the second part do hereunto set their hands and seals the day and year first above written.

"CHARLES CROCKER,

"President Southern Pacific Railroad Company.

"J. L. WILLCUTT,

"Secretary Southern Pacific Railroad Company.

"(Corporate Seal S. P. R. R. Co.)"

is one of the defendants in this action the Southern Pacific Railroad Company?

(Same objection.)

A. Yes, sir.

Q. Is the J. L. Willeutt mentioned in this mortgage as the Secretary of the Southern Pacific Railroad Company yourself?

(Same objection.)

A. Yes, sir.

Q. Did you execute that mortgage, yourself?

(Same objection.)

A. Yes, sir.

Q. Is that your signature attached thereto?

(Same objection.)

A. Attached to the original, yes, sir.

Q. Did you sign your name at that time and place?

(Same objection.)

A. Yes, sir.

Q. And attached the corporate seal of the Railroad Company thereto?

(Same objection.)

A. Yes, sir.

Q. Referring to Defendants' Exhibit No. 91, is the Southern Pacific Railroad Company mentioned on the first and second lines of the first page, and mentioned throughout said Deed of Trust, and particularly mentioned on page 12, in the following language: "In witness whereof, the said Southern Pacific Railroad Company, party of the first part, has caused these presents to be signed in its name, by its President, and attested by its Secretary, and sealed with its corporate seal.

SOUTHERN PACIFIC RAILROAD COMPANY.

By Charles F. Crocker, President.

Attest: J. L. Willeutt, Secretary." (Seal)
the Southern Pacific Railroad Company, one of the defendants in this action?

(Same objection.)

A. It is.

Q. Is that your signature attached to the original Deed of Trust?

(Same objection.)

A. It is.

Q. Did you sign the same, yourself?

(Same objection.)

A. I did.

Q. Did you attach the seal of the company at that time?

(Same objection.)

A. I did.

Q. And witness the execution of the deed of trust by the Southern Pacific Railroad Company?

(Same objection.)

A. I did.

Q. In reference to the deed of trust of 1888, is the same proportion of the entire land grant of the Southern Pacific Railroad Company, under the grant of March 3, 1871, mortgaged and given as security as a second mortgage, as you stated, was given first to secure a mortgage in reference to the trust mortgage of 1875?

(Same objection).

A. It bears the same proportion.

Q. Has the Southern Pacific Railroad Company represented to the purchasers of the bonds under this deed of trust of 1888, that the lands in controversy were a part of the security mortgage for the purpose of securing the payment of the indebtedness created by said deed of trust?

(Same objection.)

A. It has.

Q. Do the reports sent by the Southern Pacific Railroad Company to the various officers of the Government herein mentioned include a statement of the execution of these various mortgages?

(Same objection.)

A. They do.

Q. What information, if at all, and in what manner, has the Southern Pacific Railroad Company informed the various officers of the Government of the existence of these mortgages, amounts thereof and the nature thereof?

(Same objection.)

A. In their various annual and semi-annual reports.

Q. Do those reports set forth in detail a true statement of the nature and extent of the Exhibits 90 and 91?

(Same objection.)

A. They do.

Q. Has the Government been fully advised by the Southern Pacific Railroad Company of these mortgages and deeds of trust?

(Same objection.)

A. It has.

Q. And at the time they were created and issued?

(Same objection.)

A. Yes, sir; that is, they are included in the first reports following the execution of the mortgages and deeds of trust.

Mr. Redding—That is all. I may recall Mr. Willcutt, for the purpose of getting some testimony from his department in connection with the Treasury Department, but this is my direct testimony from him at the present time.

CROSS-EXAMINATION.

Mr. Call—Q. When you stated that you understood that the Southern Pacific Railroad Company, which is defendant in this suit, was the same corporation that the grant was made to by the Act of Congress of March 3, 1871, did you have in mind the consolidations made by the original Southern Pacific Railroad Company in 1870, 1873, 1874, 1888?

(Question objected to by Mr. Redding as immaterial and irrelevant; it is immaterial for the reason that Congress made a grant of lands to the Southern Pacific Railroad Company in 1866, on July 27th of that year; that in 1870 the Southern Pacific Railroad Company entered into articles of amalgamation and consolidation, which are introduced by the Government in this case, and marked Examiner's Exhibit No. 3, and in 1871, on March 3rd of that year, the Government of the United States by its Congress made a second grant to the Southern Pacific Railroad Company, which is the grant in controversy. That this latter grant, known as the Branch Line grant, was made subsequent to the amalgamation and consolidation last referred to, and that Congress at the time of making this latter grant, namely, of March 3, 1871, had full knowledge of the said amalgamation and consolidation, and full knowledge of the method of the Southern Pacific Railroad Company in entering into the articles of amalgamation and consolidation of 1870, heretofore referred to and introduced by the Government in this case, and marked Examiner's Exhibit No. 3; that the articles of amalgamation and consolidation of the Southern Pacific Railroad Company

subsequent to March 3, 1871, and subsequent to the said articles of amalgamation and consolidation of 1870, are identical in terms and conditions and procedure, and with which the said Government of the United States, the complainant in this suit, were informed and familiar; that therefore the complainant in this action is estopped from denying the validity of the articles of consolidation and amalgamation entered into between the Southern Pacific Railroad Company and other railroad companies as herein set forth and introduced; that the Government of the United States, the complainant herein, has recognized the Southern Pacific Railroad Company as it has existed from December, 1865, the date of its incorporation, down to and including the present time, and particularly the commencement of this suit, and has been fully informed of every contract, article or articles, and all acts of said Southern Pacific Railroad Company entered into of all kinds and nature, and has approved the same and endorsed the same, and furthermore the Act of Congress of July 27th, 1866, making the main line grant and the Act of Congress of March 3, 1871, making the branch line grant from a point at or near Tehachapi Pass by the way of Los Angeles, to a point on the Colorado River near Fort Yuma, which latter grant is the one in controversy, was made in direct terms to the Southern Pacific Railroad Company, its successors or assigns; that for the above reasons the question is immaterial and irrelevant.)

A. Yes, sir.

Q. Then I infer from your answer that your view is that the Southern Pacific Railroad Company, or-

gantized in 1865, still exists, notwithstanding the consolidations referred to?

(Same objection.)

A. That is my understanding and my view of it.

Q. And it is then your view that it is the same corporation and same individuality that was organized in 1865?

(Same objection.)

A. It has been treated as such throughout in our relations with the Government in our accounts, and in our entire business.

Q.—I assume from your answers that you are familiar with the terms and conditions of the consolidations referred to?

(Same objection.)

A. Yes, sir.

Q. You are then probably familiar in point of fact with the laws of this State in reference to consolidations and the effect of such consolidations?

(Same objection.)

A. I am.

Q. Do your records in your possession show the proceedings of the stockholders and Board of Directors of the consolidating companies in reference to such consolidations?

(Same objection.)

A. They do.

Mr. Call—I will ask you to produce the record containing the proceedings upon consolidation, commencing in 1873 and including that of 1874?

(Same objection.)

The Witness—I might ask, if you wish the minutes of the Southern Pacific Railroad Company only, or that of the various roads consolidated with the Southern Pacific Railroad Company?

Mr. Call—Q. Commencing with the consolidation of 1873, did you keep separate records prior to that time for the Southern Pacific Railroad Company and the Southern Pacific Branch Railroad Company?

(Same objection.)

A. Yes, sir.

Q. And after that date, did you keep a record of the Southern Pacific Branch Railroad Company?

(Same objection.)

A. None whatever.

Q. And in the consolidation of 1874, did you keep a record of those amalgamating and consolidating companies up to the time of consolidation separately?

(Same objection.)

A. Yes, sir.

Q. And after that date did you keep any records of any of the companies other than a record of the Southern Pacific Railroad Company?

(Same objection).

A. No, sir.

Mr. Call—I ask you to produce the record of the Southern Pacific Railroad Company, commencing with 1873 and including the year 1874?

(Same objection.)

(A recess was then taken by consent of counsel until 2 p. m.)

San Francisco, October 2d, 1893, 2 p. m.

CROSS-EXAMINATION OF J. L. WILLCUTT.

(Resumed.)

Mr. Call—Q. Have you produced the record requested?

A. Yes, sir (producing.)

Q. When you were referring to the Southern Pacific Railroad Company, organized in 1865, being the same corporation that is defendant here, during all that time did you have in mind the records of your company in reference to the construction of the railroad from Tehachapi by way of Los Angeles to the Colorado River, as to what corporation constructed that road?

(Same objection.)

A. Yes, sir.

Q. Did you consider that the Southern Pacific Railroad Company, organized in 1865, constructed that railroad?

(Same objection.)

A. Yes, sir.

Q. Do the records of your office show what was done in that respect, and what corporation did it?

(Same objection.)

A. There is but one corporation shown here in my records.

Q. Do the records show what was done and how it was done?

(Same objection.)

A. Yes, sir.

Mr. Redding—Mr. Call, I understand that where the words "same objection" are used, it is the equivalent of repeating in full the last stated objection.

Mr. Call—I understand that that is understood all during the trial of this case before the Special Examiner.

Q. Do the records of your office show as to the manner of constructing the railroad from Tehachapi by way of Los Angeles to the Colorado River—that is, as to how the contract work was let and when it was approved?

(Same objection.)

A. Yes, sir.

Q. Will you please produce the record showing those matters referred to, or is it all contained in this book?

(Same objection.)

A. It is contained in this book.

Q. Referring to the construction of the railroad from Tehachapi by way of Los Angeles to Colorado River, was that road constructed direct by the Southern Pacific Railroad Company, or was it by contract with the Pacific Improvement Company, or some other company?

(Same objection.)

A. Under contract with another company.

Q. What company?

(Same objection.)

A. I find that it was the Pacific Improvement Company.

Q. Was the Pacific Improvement Company paid for constructing that railroad in cash or in bonds and stock?

(Same objection.)

A. In bonds and stock.

Q. How much did they receive per mile?

(Same objection.)

A. \$25,000 per mile in bonds and \$30,000 per mile in stock.

Q. Altogether?

(Same objection.)

A. \$55,000 per mile.

Q. At the par value of the stock and bonds?

(Same objection.)

A. Yes, sir.

Q. How many miles is it from Mojave by way of Los Angeles to the Colorado River at Yuma?

(Same objection.)

A. 242 507-1000 miles.

Q. These stocks and bonds were stocks and bonds of the Southern Pacific Railroad Company, were they?

(Same objection.)

A. Yes, sir.

Q. Making altogether how much in bonds for the building of that line?

(Same objection.)

A. \$6,062,500, or thereabouts, in bonds.

Q. Were bonds also issued to the Pacific Improvement Company for constructing the other branch lines of road mentioned in the mortgage to D. O. Mills and Lloyd Tevis?

(Same objection.)

A. Yes, sir; bonds were issued under different contracts, either with the Pacific Improvement Company, the Western Development Company, or the Contract

and Finance Company; there were contracts with all of those companies.

Q. One of those three companies built all the roads, taking their pay in bonds and stock?

(Same objection).

A. Yes, sir.

Mr. Call—From the record produced by the witness, marked on the back "Record Southern Pacific R. R. Co., A," I offer the following parts of the record referred to:

Pages 117 to 132, inclusive, excepting the duplicate copy of articles as proposed, and as adopted, which will be omitted.

(Same objection.)

Mr. Call—By consent, in lieu of copying the articles of consolidation of 1873, as they appear in the original record, as now being offered, it is agreed that the articles of consolidation of that date heretofore offered, and marked Exhibit , shall stand in lieu thereof. Is that satisfactory to you?

Mr. Redding—That is satisfactory to me, with the same objection to its competency, relevancy and materiality.

Mr. Call—I also offer in evidence pages 136 and 137.

(Same objection.)

Also pages 145, 146.

(Same objection.)

Mr. Call—Also page 147.

(Same objection.)

Mr. Call—I also offer in evidence page 148.

(Same objection.)

Mr. Call—Also pages 151, 152, 153, 154, 155, 156, 157 and 158, omitting the articles of consolidation of 1874.

(Same objection.)

Mr. Call—Mr. Redding, is it admitted that the articles of 1874, marked "Master's Exhibit," shall stand in lieu of the excerpt from the record, without the necessity of copying again the articles set forth herein.

Mr. Redding—Yes, sir; subject to the same objections heretofore made.

Mr. Call—I also offer pages 159, 160, 161, and 162 to 166, inclusive.

(Same objection.)

Mr. Call—Also pages 196 to 202, inclusive.

(Same objection.)

Mr. Call—Also pages 215 to 219, inclusive.

(Same objection.)

Mr. Call—Also the heading of the meeting at page 220, and the matter contained on page 222.

(Same objection.)

Mr. Call—Also the heading of the meeting commencing at page 230, and omitting from there to page 231, commencing on page 231 with the following language: "The following preamble and resolutions," the balance of page 231, 232, and the first line on 233, and the signature of the Secretary on page 234.

(Same objection.)

Mr. Call—Also page 245, and the first seven lines on page 246, and that part of 247 commencing with the words "The following resolution was offered," and ending at the bottom of said page.

(Same objection.)

Mr. Call—Also pages 259, 260, 261, 262, 263, 276, and that part of 277 ending with the words "a proper receipt therefor" near the bottom of page 287, pages 288, 289, 290, excepting the letter pasted on that page, the first two lines of 291, 292.

(Same objection.)

Mr. Call—Also pages 301 to 304, inclusive.

(Same objection.)

Mr. Call—Also pages 309 to 311, inclusive, 312 and 313.

(Same objection.)

Mr. Call—The heading at page 457, and then omit down to the seventh line from the bottom on page 458, and including the last six lines on page 458, page 459, the heading of the meeting on page 460, and the first resolution on 462, omitting what occurs between.

(Same objection.)

Mr. Call—Also page 474, and ending on page 475.

(Same objection.)

Mr. Call—The heading on page 476, and that part of page 479 commencing with the words "the following resolution was offered," and ending with "J. L. Willeutt, Secretary."

(Same objection.)

Mr. Call—The heading on page 480, and that part of 481 commencing with the words, "the following resolution was offered by Charles Mayne," and ending with the words "taking a proper voucher therefor," and comprising seventeen lines.

(Same objection.)

Mr. Call—Also the heading of the meeting on page 486, omitting until the following words are reached on page 490, "the following resolution was offered by Charles Mayne," and including the balance of 490, excepting the last three lines; also the signature of J. L. Willeutt, Secretary, on page 491.

(Same objection.)

Mr. Call—Also the heading on page 492, and the last half of page 493, commencing with the words "the following resolution was offered," and ending with the first three lines of page 494.

(Same objection.)

Mr. Call—Also the heading of page 495, and the first resolution on page 497, taking half of the page.

(Same objection.)

Mr. Call—Also the heading of the meeting on page 500, and the resolution contained on the bottom half of page 501, and ending on page 502.

(Same objection.)

Mr. Call—Also the heading on page 503, and the last half of page 504, commencing with the words "the following resolution was offered," and ending with the first three lines on page 505, also the signature of the Secretary on the same page.

(Same objection.)

Mr. Call—The heading of 504, and the resolution at bottom of page 515, commencing with the words, "on motion of N. T. Smith," and ending on page 516 with the words, "on open account," also the signature of the Secretary on page 518.

(Same objection.)

Mr. Call—I will ask the Special Examiner to make copies of this portion of this record which I have of-

ferred, and to file it in evidence in the case as Exhibit before the Special Examiner, L; and would it be satisfactory for him to do so, to be taken with the same effect as the original, subject to the same objection?

Mr. Redding—Yes, sir, satisfactory, provided it is understood that my objection runs to each excerpt taken throughout the entire series of pages on the ground of incompetency, immateriality and irrelevancy, as heretofore set forth.

Mr. Call—Q. Referring to your testimony on direct examination that representations were made by the Southern Pacific Railroad Company to purchasers of bonds, or proposed purchasers of bonds, that the Company represented to such purchasers that the mortgage of 1875 to Mills and Tevis, trustees, covered the lands in suit, I ask you to state how such representations were made and by whom?

A. The mortgage, I understand, covers all those lands, and from information which I have been called upon to furnish the New York office from time to time, I assume those representations were made to the purchasers of the bonds.

Q. Did you personally make such representations yourself? A. No, sir.

Q. Were such representations made in your presence by any authorized officer of the company to any proposed purchaser? A. No, sir.

Q. In assuming that the mortgage covered the lands in suit, are you familiar with the terms and conditions of the mortgage?

The Witness—As expressed therein?

Mr. Call—Q. You are aware that the mortgage states in substance that it covers lands granted to the Southern Pacific Railroad Company, are you not?

(Question objected to by Mr. Redding as being misleading and not the best evidence, the mortgage itself sets forth what it pretends to cover in the shape of security.)

Mr. Call—I want to get the source of information of the witness. A. Yes, sir.

Mr. Call—Q. And you are then aware that the mortgage does not describe any particular tracts of land in terms?

A. There are no particular tracts described, but reference is made on page 1 of the mortgage to the fact that the Southern Pacific Railroad Company is about to issue its first mortgage bonds for the said railroad and telegraph line, and its rolling stock, fixtures, and franchises, and also upon the lands granted to it by Congress by the Act of Congress entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," approved July 27, 1866, and the Act entitled "An Act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road and for other purposes," approved March 3d, 1871, not sold or otherwise disposed of prior to the execution of this mortgage, and upon page 6 the expression that this mortgage covers "all and singular, the said several sections of land so as aforesaid granted by said Acts of Congress; and also all the estate, right, title, interest, claim and demand whatsoever, at law or in equity, of, in or to

the same, or any part or parcel thereof, which the said party of the first part now has, holds, owns or is entitled to, or hereafter may or shall acquire, have, hold, own, or be or become entitled to by force or virtue of the said Acts of Congress; saving, excepting and reserving all parts and parcels of said lands which have been sold or contracted to be sold or disposed of heretofore, or which are or shall be included in the right of way of the said railroads and telegraph lines of the said company, as defined and granted by the Acts of Congress aforesaid, or used for the construction or operation thereof, or for the track, yards, depot grounds, buildings or erections thereon."

Q. Are you familiar with the terms and conditions of the Acts of Congress therein referred to?

(Question objected to by Mr. Redding as immaterial, irrelevant and incompetent, and calling for the opinion of the witness.)

A. Only in a general way.

Q. When you stated that you assumed that the mortgage covered lands in suit, did you or did you not assume that the lands were covered by the grants or Acts of Congress referred to?

A. I assumed that they were; I understood that they were.

Q. Were you aware that the Acts of Congress referred to did not grant to the Southern Pacific Railroad Company lands which had been previously granted, and also lands which had been reserved for any purpose?

(Same objection.)

A. Yes, sir.

Q. Has there been any consolidation of the Southern Pacific Railroad Company with other railroad companies since that made in 1888?

A. No, sir.

RE-DIRECT EXAMINATION.

Mr. Redding—Have you obtained from Mr. Lansing the letter of acknowledgment from the office of Commissioner of Railroads showing the receipt by the Department of the Interior of the reports of the Southern Pacific Railroad Company for the years of 1889, 1890, 1891, 1892 and 1893?

A. I have.

Mr. Redding—Defendants offer in evidence letters from the Department of the Interior, office of Commissioner of Railroads, addressed to G. L. Lansing, Esq., Secretary and Controller Southern Pacific Company, dated respectively October 24th, 1889, October 21st, 1890, October 21st, 1891, September 28, 1892, and September 16th, 1893, and ask that they be marked "Defendants' Exhibits before the Special Examiner, Nos. 92, 93, 94, 95 and 96."

(Letter from the Department of the Interior, office of Commissioner of Railroads, dated Washington, October 24, 1889, signed W. M. Thompson, in charge of office, addressed to G. L. Lansing, Esq., Controller Southern Pacific Co., is marked by the Special Examiner "Defendants' Exhibit before the Special Examiner, No. 92, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

(Letter from the Department of the Interior, office of Commissioner of Railroads, dated October 21, 1890,

signed W. M. Thompson, in charge of office, addressed to G. L. Lansing, Esq., Secretary and Controller Southern Pacific Company, is marked by the Special Examiner "Defendant's Exhibit before the Special Examiner, No. 93, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

(Letter from the Department of the Interior, office of Commissioner of Railroads, dated Washington, October 21, 1891, signed W. M. Thomson, bookkeeper, addressed to G. L. Lansing, Esq., Secretary and Controller Southern Pacific Company, is marked by the Special Examiner "Defendants' Exhibit before the Special Examiner, No. 94, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

(Letter from the Department of the Interior, office of Commissioner of Railroads, dated Washington, September 28, 1892, signed W. M. Thompson, bookkeeper, addressed to G. L. Lansing, Esq., Secretary and Controller Southern Pacific Company, is marked by the Special Examiner "Defendants' Exhibit before the Special Examiner, No. 95, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

(Letter from the Department of the Interior, office of Commissioner of Railroads, dated Washington, September 16, 1893, signed F. E. Storm, bookkeeper, addressed G. L. Lansing, Esq., Secretary and Controller Southern Pacific Company, is marked by the Special Examiner "Defendants' Exhibit before the Special Examiner, No. 96, Stephen Potter, Special

Examiner," and a certified copy thereof is attached hereto.)

J. L. WILLCUTT.

(An adjournment was then taken by consent of counsel until Tuesday, October 3d, 1893, at 1 p. m.)

San Francisco, October 3d, 1893.

Testimony of G. L. Lansing:

G. L. Lansing, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. Redding—What is your present occupation?

A. I am Secretary and Controller of the Southern Pacific Company.

Q. As such Controller, do you have any official relations with the accounts of the Southern Pacific Railroad Company and its dealings with the Government of the United States?

A. Yes, sir, the Southern Pacific Company is the lessee of the Southern Pacific Railroad Company's property.

Q. What are your official duties with respect to the Southern Pacific Company and the Southern Pacific Railroad Company, acting in the capacity you have named?

A. I have control of the settlement of accounts in connection with the operation of the Southern Pacific Railroad, and in connection with the transportation by the Southern Pacific Railroad for the United States Government of mails, troops, military supplies, and

so forth, and I have charge of all matters affecting the operations of the Southern Pacific Railroad lines so far as the accounting is concerned and the settlement of the accounts.

Q. Are you in communication officially with the Government of the United States in connection with these matters? A. Yes, sir.

Q. The Southern Pacific Railroad Company branch line, as it is known, has a grant to it under the Act of Congress of March 3d, 1871; the terms of this grant provide for the railroad to be constructed, and when constructed to be maintained as a first-class road, and to be at all times subject to the use of the United States for a military and postal road, and for the transportation of the effects of the Government and munitions of war, etc.; will you state whether or not there is the relation established between the Government of the United States and the Southern Pacific Railroad Company under this Act of Congress by which this road between a point at or near Tehachapi by way of Los Angeles to Fort Yuma has been and is now being used for the purposes that I have enumerated?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence, and upon the further ground that the lands in suit herein were excepted out of the grant to the Southern Pacific Railroad Company, made by the Act of Congress of March 3d, 1871, by the terms and conditions of said Act; and upon the further ground that the lands in suit herein were withdrawn for the Atlantic & Pacific Railroad Company and were reserved before the

Southern Pacific Railroad Company filed its map of definite location; and upon the further ground that the matters in issue in this suit have been finally decided and adjudicated by the Supreme Court of the United States and the United States Circuit Court for the Southern District of California, as shown by the records of such decisions in evidence herein; and upon the further ground that the Southern Pacific Railroad Company, to which the grant was made by Act of Congress of March 3, 1871, by entering into the Articles of Consolidation and Amalgamation in evidence herein, marked Master's Exhibits 1, 2 and 3, and Defendants' Exhibits before the Special Examiner, Nos. 88 and 89, has surrendered to the United States all interest in these lands, and did thereby surrender to the United States in each case of consolidation all right to earn such lands by constructing a railroad; and upon the further ground that the mortgage of 1875 to Lloyd Tevis and D. O. Mills, trustees, shows upon its face that it does not purport to cover lands not granted to the Southern Pacific Railroad Company; and upon the further ground that the records of the Interior Department and of the United States Land Office at Los Angeles, and the United States Land Office at San Francisco, and the records of the office of the Secretary of State for California, and the public laws of the United States and of California, show that the Southern Pacific Railroad Company, defendant herein, has no interest in these lands.)

A. Yes sir, the relations which at present exist and are recognized between the Southern Pacific Railroad Company, its lessee, the Southern Pacific Company,

and the officials of the United States Government, so far as my business relations with them are concerned, are those that have been and are provided for by the Act of Congress referred to in the question.

Q. Do you know of your own knowledge whether or not the Government of the United States is using the line of railroad of the Southern Pacific Railroad Company, one of the defendants in this action, from a point at or near Tehachapi Pass by the way of Los Angeles to a point on the Colorado River near Yuma, for the purpose of transporting its postal business and troops, munitions of war, stores, and other Government effects?

Mr. Call—Mr. Redding, does our understanding still continue in regard to inserting the words "same objection" to stand in lieu of the objection previously made?

Mr. Redding—I understand that it does.

Mr. Call—Insert same "objection" to each question.
(Same objection.)

A. Yes, sir; it is.

Mr. Redding—Q. Will you state how this information and knowledge comes to be known by you officially?

(Same objection.)

A. In my official position it is my business to settle the accounts between the United States and the Southern Pacific Railroad Company for transportation of mails, troops, military supplies, etc., for the Government over the line of railroad named, and by that means I know personally of the transportation being performed and the terms of its settlement on the part of the Government.

Q. Will you please produce the last official report of these transactions issued by the Postmaster's Department of the Government, and state therefrom under what rules and regulations of the Postal Department the Southern Pacific Railroad Company, one of the defendants in this action, is now proceeding with reference to Government transportation.

(Same objection.)

A. The volume that I have before me is the postal laws and regulations of the United States of America, published in Washington at the Government Printing Office in 1893; this volume gives the regulations relating to the transportation of mails, and the laws upon which they are based; sections 716, 717, 718 and 719 in this volume, pages 293 and 294, state the method of fixing the rate for the transportation of mail as provided by law, covering all the railroads in the United States, and finally referring to land grant roads; relating to land grant roads, Section 719 recites that "railroad companies whose railroad was constructed in whole or in part by a land grant made by Congress on the condition that the mails should be transported over their road at such price as Congress should by law direct, shall receive only eighty per centum of the compensation authorized by this Act; Act of July 12th, 1876."

Q. Is the law that you have just quoted the one that is being applied by the Postal Department of the United States to the transactions of the Southern Pacific Railroad Company between the points named, in reference to governmental transportation?

(Same objection.)

A. Yes, sir; it is.

Mr. Redding—Defendants ask leave to refer to the postal laws and regulations of 1893, printed at the Government Printing Office, and entitled as follows: "Postal Laws and Regulations of the United States of America, compiled, revised and published in accordance with the Act of Congress, approved March 3d, 1891, Washington, Government Printing Office, 1893," and so much thereof as may refer to land grant railroads, and in particular to the Southern Pacific Railroad Company, one of the defendants in this action, and ask that the same may be considered in evidence, and the defendants hereby offer in evidence this volume, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 97," or in lieu of its being offered in evidence that it may be so considered by this Court as an official document in the record.

(Same objection.)

Mr. Call—I have no objections to its being considered in evidence by reference, without the necessity of burdening the record by having it actually filed as an exhibit.

Mr. Redding—That being satisfactory, we will so consider it.

Mr. Call—Yes, sir; subject to the objections made.

Mr. Redding—And I understand that on your part to all intents and purposes it is in evidence?

Mr. Call—Yes, sir.

Mr. Redding—Without objection as to the incompetency of the volume as an official document.

Mr. Call—It is in evidence with the same effect as if it had actually been filed and marked as an exhibit in the case.

Mr. Redding—Q. Please, show how this is so?

(Same objection.)

A. The report of the Postmaster-General of the United States for 1890, pages 450 and 451, contains a table showing the readjustment of the rates of pay for mail on railroad routes in States and Territories in which the contract term expired June 30th, 1890; on page 450, among the routes enumerated, is route 176-014, Goshen, California, to Yuma, Arizona, particular title of the company carrying the mail is the Southern Pacific Company, the length of the road is 490 55-100 miles, the average weight of mails carried over entire route per day is 4,737 pounds, the pay per mile per annum for transportation \$133.38 for 4,737 pounds, average weight of mail carried over entire route per day; by referring to the postal laws and regulations above quoted, it will be seen that the compensation as fixed by those laws, requires the ascertainment of the average weight of mails carried over the entire route per diem; applying the laws upon the average weight here shown, 4,737 pounds, the calculation will show that the rate which the Postmaster-General reports as being paid, namely, \$133.38 per mile per annum is eighty per centum of the rate allowed by Section 719 of the postal laws and regulations above referred to; thus showing that the Post Office Department, in fixing the rate for the contract term commencing with July 1st, 1890, recognized the operation of the Land Grant Act of the Southern Pacific Railroad, in allowing but

eighty per cent. of the usual compensation for the service.

Q. That refers to what years?

(Same objection.)

A. The laws of the Post Office Department affecting the transportation of mails requires they shall be based upon weighings made for thirty consecutive days, at least once in four years; they allow the term generally to run for four years, but it may be changed by order of the Postmaster-General before the end of that term; the rate here fixed went into effect July 1st, 1890, and is still in effect.

Q. Do you know whether or not the Southern Pacific Railroad Company, by its lessee, the Southern Pacific Company, is transporting the mails of the Government between the points named, namely, from Tehachapi Pass by the way of Los Angeles to Fort Yuma upon the basis stated by you, and in accordance with the rates fixed, as stated by you, from the official records?

(Same objection.)

A. Yes, sir; it is.

Q. Prior to the last adjustment of rates, which, as you state, dates from 1890, what was the rate fixed, and under what rates was the Southern Pacific Railroad Company doing this business?

(Same objection.)

A. The compensation fixed under the law by the Postmaster-General on the same route, namely, from Goshen to Yuma, covering the contract period of four years, ending June 30th, 1890, was \$123.80 per mile per annum; the payment for this period was made to

the Southern Pacific Railroad Company, as appears by the report of the Postmaster-General for 1890, at page 365.

Q. Why was it made to the Southern Pacific Railroad Company in that instance, and why was it made to the Southern Pacific Company in the instance cited by you before?

(Same objection.)

A. The reason I suppose to be, that the lease of the Southern Pacific Railroad to the Southern Pacific Company was made in 1885; the readjustment of pay on which this rate was based by the Postmaster-General was made July 1st, 1886; at that time there was a question as to the proper relations of the Southern Pacific Railroad Company to the Central Pacific Railroad Company, which was the former lessee of the Southern Pacific Railroad; this led to some disputes between the accounting officers of the Treasury Department of the Government, and to avoid any mistake being made as to the proper payee, they used the name of the lessor company, namely, the Southern Pacific Railroad Company, and made settlements with that Company direct.

Q. From what period of time were the rates last stated by you applied to the governmental transportation of the Southern Pacific Railroad Company between the points named?

(Same objection.)

A. I think that was answered in the previous answer; I said for four years ending June 30th, 1890.

A. That would carry it back, then, to June 30th, 1886?

(Same objection.)

A. Yes, sir.

Q. Do you know, as a fact, that the Government of the United States used this portion of the road of the Southern Pacific Railroad Company, namely, between Tehachapi and Fort Yuma by the way of Los Angeles, for the transportation of Government troops, munitions of war, postal service, and other effects during that time?

(Same objection.)

A. Yes, sir; I do.

Q. What were the rates prior to 1886 allowed by the Government to the Southern Pacific Railroad Company, or its lessees, for similar use and over the same portion of the road, for mails, munitions of war, and all governmental purposes?

(Same objection.)

A. The rates for the transportation of mails can be shown by the annual reports during the period, published by the Postmaster-General; the rates for the transportation of the army, military supplies, etc., were those which were provided by the tariffs of the railroad company from time to time, covering the particular property transported or the persons.

Mr. Redding—We offer in the same manner the report of the Postmaster-General for the year ending June 30th, 1890, and particularly the pages cited by the witness. This volume is entitled in the public print as follows: "Annual Report of the Postmaster-General of the United States for the fiscal year ending June 30th, 1890, Washington Government Printing Office, 1890," with the understanding that it shall be

considered in evidence to all intents and purposes, without its being filed.

Mr. Call—That is satisfactory, and subject to the same objections.

Mr. Redding—Q. Have you the Postmaster-General's report for the four years preceding 1886?

(Same objection.)

A. I have the report here for the year 1886 (producing), the report of the Postmaster-General for 1886, page 312, shows the rate on the route from Goshen, California, to Yuma, Arizona, over the Southern Pacific Railroad 490 33-100 miles, at \$110.13 per mile per annum; this covers the period of four years ending on June 30th, 1886; a note on the table opposite the item reads as follows: "Land Grant," that note is used in those cases where the reduction is made in fixing the compensation allowing but eighty per cent. of the usual rates for roads having land grants.

Q. Do you know as a fact, whether that was the rate received by the Southern Pacific Railroad Company for the transportation of the postal service between the points named during that period of time from the Government?

(Same objection.)

A. It was during that time either received from the Government or credited in account with the Central Pacific Railroad Company, lessee of the Southern Pacific Railroad at that time.

Mr. Redding—Defendants offer in evidence, in the same manner as the last exhibit was offered, report of the Postmaster-General for 1886; which has the official title as follows: "Annual Report of Postmaster-

General of the United States for the fiscal year ending June 30th, 1886, Washington, Government Printing Office, 1886;" and we particularly refer to the pages cited by the witness; and I ask that this be admitted in evidence in the same manner as the last exhibits, without the necessity of this volume being filed as an exhibit at this time.

Mr. Call—That is understood, subject to the same objections.

Mr. Redding—Q. Prior to 1882, what rates were allowed to the Southern Pacific Railroad Company for postal service between the points named?

(Same objection.)

A. The report of the Postmaster-General for 1882, on page 172, shows readjustment of rates in effect July 1st, 1881, on route 46,014, from Goshen to Yuma, 490 33-100 miles, at the rate of \$110.13 per mile per annum.

Q. And prior to that what rates were charged.

(Same objection.)

A. The rates prior to that are shown on same page of same report to have been \$75.24 per mile per annum, and this rate was also in effect on June 30th, 1879, as shown by the report of the Postmaster-General for the year 1879, at page 99; in the report of the Postmaster-General for the year 1878, page 151, a table is given showing the readjustment of the rates of pay on contracts which expired June 30th, 1878; on page 150 appears, route 40,014, Huron to Yuma, a distance of 530 29-100 miles, rate of pay pe. mile per annum, \$79.20; a note on this page recites that 54½ miles apply from November 1st, 1875, from May 5th,

1877, between Colton and Yuma, the residue of the route from July 1st, 1877; the report of the Postmaster-General for 1877 on page 57, shows that the compensation paid on June 30th, 1877, being the rate at that time in effect on route 46,014, from Goshen to Caliente, a distance of 95 71-100 miles, being at the annual rate per mile per annum of \$54; a note states that pay on 54 40-100 miles is estimated; this is the commencement of compensation on the line as constructed southerly from Goshen.

Q. Have you now stated the rates as regulated by the Government of the United States, with reference to the Southern Pacific Railroad Company between the points named, namely, Tehachapi and Fort Yuma, by the way of Los Angeles, from the commencement of the construction of the road down to the present time?

(Same objection.)

A. Yes, sir.

Mr. Redding—The defendants offer in evidence in the same manner as heretofore, that is to say, by reference, the report of the Postmaster-General for 1877, and we particularly refer to the pages cited by the witness, which report is officially declared to be as follows: "Annual Report of the Postmaster-General of the United States for the fiscal year ending June 30th, 1877, Washington, Government Printing Office, 1877."

(Same objection.)

Mr. Redding—Defendants next offer in evidence, in the same manner, the report of the Postmaster-General for 1878, which is officially published to be as follows: "Annual Report of the Postmaster-General of the United States for the fiscal year ending June 30th,

1878, Washington, Government Printing Office, 1870;" with particular reference to the pages cited by witness.

(Same objection.)

Mr. Redding—Defendants next offer in evidence, in the same manner, the report of the Postmaster-General for 1879, officially published to be as follows: "The Annual Report of the Postmaster-General of the United States, for the fiscal year ending June 30th, 1879, Washington, Government Printing Office, 1879," with particular reference to the pages cited by witness.

(Same objection.)

Mr. Redding—Defendants next offer in evidence the report of the Postmaster-General for 1880, in the same manner, officially published to be as follows: "Annual Report of the Postmaster-General of the United States for the fiscal year ending June 30th, 1880, Washington, Government Printing Office, 1880," with particular reference to the pages cited by witness.

(Same objection.)

Mr. Redding—Defendants next offer in evidence report of the Postmaster-General for 1882, in the same manner, officially published as "Annual Report of the Postmaster-General of the United States for the fiscal year ending June 30th, 1882, Washington, Government Printing Office, 1882," with particular reference to the pages cited by the witness; and I ask, Mr. Call, that each one of these may be considered as introduced in evidence by reference, without the necessity of the introduction of them in the records of the case by exhibit mark.

Mr. Call—I have no objection to their being offered by reference, to the same effect as if they were filed, saving my objections to the evidence heretofore made.

Mr. Redding—Q. You have stated that in some instances these rates were allowed direct to the Southern Pacific Railroad Company, and in other instances to the Southern Pacific Company, lessee of the Southern Pacific Railroad Company, and in other instances to the Central Pacific Railroad Company, lessee of the Southern Pacific Railroad Company; will you state in what manner the adjustment was made between the Southern Pacific Railroad Company and its lessees when the rates were allowed to the latter and not to the Southern Pacific Railroad Company direct?

(Same objection.)

A. During the time that the railroad between Goshen and Yuma was leased to the Central Pacific Railroad Company, compensation for United States transportation on that road was withheld by the Treasury Department on account of the indebtedness of the lessee, the Central Pacific Railroad Company, to the Government, owing to the issue of Government bonds made for the construction of that road; the settlement with the Government, however, for the transportation of mails, as shown by the reports of the Postmaster-General just quoted, and on the pages named, was made in each case with the Southern Pacific Railroad Company by the United States Government, and the Central Pacific lessee received no payment for the transportation for each of the years named from the time of the commencement of construction from Goshen, California, southwards towards Yuma—

Mr. Redding—(interrupting) Let me interrupt you, Mr. Lansing. When you speak of Goshen do you speak of a portion of the main line road which runs by way of Goshen to Tehachapi, and thence by way of Los Angeles to Fort Yuma?

(Same objection.)

Q. You mean on the main line grant?

(Same objection.)

A. Yes, sir; on the main line running southerly through the San Joaquin Valley; the line through the upper portion of the valley was constructed by the Central Pacific to Goshen; at Goshen the Southern Pacific construction commenced.

Mr. Call—Q. From San Francisco to Goshen was built by the Central Pacific? A. Yes, sir.

Q. And from Goshen below southward it was built by the Southern Pacific Railroad Company?

A. Yes, sir; I was saying that from the commencement of the construction of the Southern Pacific Railroad from Goshen on the main line near the Tehachapi Pass towards Yuma, the transportation for the United States has been accounted for by the United States Government in the name of the Southern Pacific Railroad Company.

Mr. Redding—Q. With reference to the use of this line of railroad by the Government for purposes other than postal, will you state what is the method adopted by the Government in calling upon the road to furnish at all times the necessary means of transportation for these purposes. How is the object accomplished by the Government?

(Same objection.)

A. In the event that the Government has any freight, munitions of war, or anything of that kind that it wishes to ship, it sends its freight to the railroad company's depot and delivers it to the railroad company with a prepared bill of lading, which is made on a form prescribed by the War Department of the Government; this bill of lading is accepted by the railroad company and used in a settlement of its account with the Government subsequently for the services and transportation performed.

Q. Do you know as a fact whether or not the Southern Pacific Railroad Company, between the points named, and the line thereof, and the rolling stock thereof, have been used by the Government of the United States from the date of its construction down to the present time for the purpose of transporting its munitions of war, troops, and governmental effects?

(Same objection.)

A. Yes, sir; I know that it has been so used continuously.

Q. Is it being used at the present time for these purposes?

(Same objection.)

A. Yes, sir.

Q. Has it been ever since 1878?

(Same objection.)

A. Yes, sir.

Q. You have stated that the pay given to the Southern Pacific Railroad Company by the Government for the transportation of the Government mail, and for the general system of postal service rendered

to the Government by the Southern Pacific Railroad Company, between the points named, is less by twenty per cent., or some per cent. named, than that allowed other kinds of railroads; what do you mean by that? Will you state why a less percentage is allowed this company than other companies?

(Same objection.)

A. The postal laws fix the compensation for the transportation of mails based upon the service performed, and applying that principle they fixed the rates allowed for all the railroads of the United States; a road receiving pay in proportion to the service performed, and two roads performing the same service receiving equal pay, but with the roads which received the aid of a grant of land from the Government, subject to a certain condition regarding transportation, Congress passed a law allowing these lines but eighty per cent of the amount allowed other roads for similar services.

Mr. Call—Q. Was not that regulation made by the Secretary of the Interior?

A. No, by an Act of Congress; this is the Act of Congress approved July 12th, 1876, Volume 19, United States Statutes, page 82.

Mr. Redding—Q. Has the Southern Pacific Railroad Company, one of the defendants in this case, been subjected to this deduction by the Government in its pay for transportation of mail and postal service?

(Same objection.)

A. Yes, sir, and it was considered, and has been interpreted by the Government to be in conformity

with one of the obligations of the contract existing between the Railroad Company and the Government, as stated in the granting act, and part of the consideration for the grant of lands.

Q. Has this deduction continued through all these years that you have testified?

(Same objection.)

A. Yes, sir.

Q. What was the last adjustment of rate given to the Southern Pacific Railroad Company as a land grant road under the instructions of the Interior Department by Acts of Congress?

(Same objection.)

A. The Southern Pacific Railroad, under an Act of Congress making appropriations for the transportation of the army for the present fiscal year ending June 30th, 1893, was allowed but fifty per cent. of the regular rates of transportation for freight and troops.

Q. Was this Act of Congress designed to refer to land grant railroads?

(Same objection.)

A. Yes, sir.

Q. Has the interpretation of this act been applied to the Southern Pacific Railroad Company, one of the defendants herein?

(Same objection.)

A. It has.

Q. Do you know whether or not the Southern Pacific Railroad Company, one of the defendants herein, holds itself in position and readiness, at all times and under all circumstances and conditions, to supply the Government of the United States with transportation

over its lines of road, and between the points named as aforesaid, for all kinds of governmental effects, including postal service, munitions of war, etc.?

(Same objection.)

A. Yes, sir, it is a fact; the Southern Pacific Railroad Company has always recognized its obligation under the granting act to perform all service required by the Government at all times.

Q. Has that been a continuous existence of things since the construction of the road down to and including the present time?

(Same objection.)

A. Yes, sir.

Q. How long have you been in the employ of the Southern Pacific Company?

(Same objection.)

A. Since March 1st, 1885.

Q. Prior to that time in the employ of what corporations were you?

(Same objection.)

A. I was employed by the Central Pacific Railroad Company prior to that time.

Q. In what capacity?

(Same objection.)

A. As assistant secretary.

Q. Did you in that capacity have charge of the accounts between the Southern Pacific Railroad Company and the Central Pacific Railroad Company as lessee of the Southern Pacific Railroad?

(Same objection.)

A. Yes, sir.

Q. Then your testimony with reference to the relations of the Southern Pacific Railroad Company,

through its lessee, the Central Pacific Railroad Company, with the Government of the United States, is based on an intimate knowledge of the occurrences happening in the years named?

(Same objection.)

A. Yes, sir; my experience in connection with the subject extends to the time of the commencement of the construction of the Southern Pacific Railroad from Goshen towards Yuma.

Q. And down to and including the present time?

(Same objection.)

A. Yes, sir.

(The witness was temporarily withdrawn in order to take the testimony of James B. Randol and D. G. Schofield, whose testimony appears in this record next following the testimony of this witness, being so placed for convenience in signing.)

(An adjournment was then taken by consent of counsel until Wednesday, October 4th, 1893, at 10:30 A. M.)

San Francisco, October 4th, 1893.

CROSS-EXAMINATION OF G. L. LANSING.

Mr. Call—Q. Referring to your testimony on direct examination to the effect that the Southern Pacific Company was a lessee of the Southern Pacific Railroad Company of the line from Goshen by way of Los Angeles to the Colorado River, state when that line was leased to the Southern Pacific Company by the Southern Pacific Railroad Company?

A. The lease took effect March 1, 1885; it was dated in February, 1885; the exact date I do not recollect.

Q. Can you produce before the Special Examiner a copy of the lease?

A. Yes, sir.

Mr. Call—I ask you to do so.

The Witness—This is the original (producing).

Q. Have you produced before the Special Examiner the lease referred to?

A. Yes, sir.

Q. This is the original lease?

A. Yes, sir.

Mr. Call—I offer the lease in evidence, and ask that the same be marked "Exhibit before the Special Examiner, M."

Have you any objections, Mr. Redding, to the Special Examiner making a copy of it and certifying to it as a copy?

Mr. Redding—Not provided it is made here in the building.

(The lease produced by witness and offered in evidence by Mr. Call is marked by the Special Examiner, "Exhibit before the Special Examiner, M. Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

Mr. Call—I understood you to say that in reference to the payment by the Government for transporting mails over lines of railroad in which the construction was aided by land grants, that the Government paid 80 per cent. of what was paid on other lines—is that correct?

A. Yes, sir. 80 per cent. of what is paid to other roads for similar service.

Q. Does the same rule prevail with reference to the transportation of troops, and munitions of war and public stores?

A. No, sir, they are paid 50 per cent. of what is charged private parties for similar service under the present appropriation acts.

Q. What is the remedy of an aided railroad if the compensation fixed is not satisfactory or is not deemed sufficient by the company?

A. I understand that there is no remedy, that the rate is fixed by the Government at its own will in consideration of the stipulations of the contract which are embodied in the granting act, that the Government can fix a rate of 80 per cent. or of 2 per cent. or of one per cent. if it chooses to do so.

Q. Has the Southern Pacific Company of Kentucky recovered any moneys from the Government in the Court of Claims outside of those allowed by the department for transporting of mails or other Government property?

Mr. Redding—We will object to the question as being misleading; and request the counsel to specify what he means in reference to the recovery of moneys.

Mr. Call—I wish the witness to explain that.

Mr. Redding—I object to the question as misleading. The question does not state that it refers to transactions between the Southern Pacific Railroad Company, and the Government in particular. The Southern Pacific Company is dealing with a half a dozen or more companies, and I ask that the counsel for the

Government in order not to mislead the witness, specify what particular moneys, or suits, or claims, he refers to, and between the Government on the one side, and the Southern Pacific Railroad Company, or the Southern Pacific Company, in its dealings with the Southern Pacific Railroad Company, on the other.

A. The Southern Pacific Company has received a judgment in the Court of Claims which has been affirmed by the Supreme Court of the United States for an amount to exceed \$1,800,000 for transportation services due it in cash; Congress has never made any appropriation for the payment of this claim; I am not advised whether any portion of the amount is for transportation over the line between Goshen and Yuma or any portion of the Southern Pacific Railroad.

Q. Referring to those lines which are not aided by the Government, is the mode for payment by the Government the same as over aided lines—that is, is it done as you were stating by means of transportation requests?

A. Yes, sir, the method of accounting and payment between the Government and the Railroad Companies is conducted in the same way between aided lines and non-aided lines: by aided lines, I mean lines aided, like the Southern Pacific, by grant of lands and not of subsidy bonds; for lines subsidized by bonds a different method is adopted.

Q. When was that judgment rendered in the Court of Claims for a million and odd dollars?

A. It was affirmed by the Supreme Court within a year, but cannot give the date from recollection.

Q. Was it not affirmed by the Supreme Court of the District of Columbia?

A. Oh, I am mistaken about that; it was not appealed on the part of the Government from the Court of Claims.

Mr. Redding—Judgment was rendered last January, I believe?

The Witness—I can give you the reference.

Mr. Call—Oh, it is not important.

Q. Under what provision of law was that suit brought?

A. I understand under the same provisions of law that any common carrier would bring a suit for transportation services to the Government, simply that the services had been performed and the compensation was due.

Q. I thought you said that when the rates were fixed by the contract that there was no remedy for the Railroad Company if it disputed the adequacy of the amount; please explain how that is.

A. I have stated that I did not know that any portion of this judgment of the amount involved in the suit, had reference to transportation over the lines of the Southern Pacific Railroad, and that upon those lines the 80 per cent. was allowed for transportation of the mails under the Act of Congress, the granting act; that in the suit, and the amount involved in the suit in question, there were, as I understand it, no claims for transportation on that line; I am very sure there was no claim for transportation for disputed amounts of any kind.

Q. How does the amount allowed to the Southern Pacific Railroad, under contract, compare with amounts allowed in Eastern States?

A. For the portion of the line which has received a grant of lands the Government paid 80 per cent. for the transportation of mails of the rates allowed for similar service performed by roads in the Eastern States.

Q. Is the rate from Chicago to Mississippi Valley States, 20 per cent. added to what is paid the Southern Pacific, or is it less than that?

A. I will explain my statement a little more clearly by saying that in the transportation of the mails for the United States, compensation is fixed by law, and is determined upon the weights of mails carried; the law applies to all railroads in the United States; a special Act applying to the land grant line of the Southern Pacific Railroad, provides that the Government may fix the rates for the transportation of mails of the Southern Pacific road—

Mr. Call—(interrupting) The Postmaster-General?

The Witness—The Government.

A. (Continuing.) And the Government subsequently by an Act of Congress did fix the rates at 80 per cent. for the transportation of mails of those which are provided by the general law prescribing the rates which shall apply to all railroads in the United States so that the Southern Pacific Railroad receives but 80 per cent. of the amount which roads in the Eastern States receive for the transportation of mails where they perform a similar amount of service.

G. L. LANSING.

Testimony of James B. Randol:

James B. Randol, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

(The testimony of this witness was taken on October 3d, the witness Lansing being temporarily withdrawn, and is placed at this point in the record for convenience in signing.)

DIRECT EXAMINATION.

Mr. Redding—Q. Are you one of the defendants in this action of the United States of America, complainant against the Southern Pacific Railroad Company, and others, defendants, No. 184?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence; and upon the further ground that the lands in suit herein were excepted out of the grant of the Southern Pacific Railroad Company made by the Act of Congress of March 3d, 1871, by the terms and conditions of said Act; and upon the further ground that the lands in suit herein were withdrawn for the Atlantic and Pacific Railroad Company, and were reserved before the Southern Pacific Railroad Company filed its map of definite location; and upon the further ground that the matters in issue in this suit have been finally decided and adjudicated by the Supreme Court of the United States, and the United States Circuit Court for the Southern District of California, as shown by the records of such decisions in evidence herein; and upon the further ground that the Southern Pacific Railroad Company, to which the grant was made by the Act of Congress of March 3d, 1871, by entering into the

Articles of Consolidation and Amalgamation in evidence herein, marked "Master's Exhibits 1, 2 and 3, and Defendant's Exhibits before the Special Examiner, Nos. 88 and 89, has surrendered to the United States all interest in these lands, and did hereby surrender to the United States each case of consolidation, all right to earn such lands by constructing a railroad; and upon the further ground that the mortgage of 1875 to Lloyd Tevis and D. O. Mills, Trustees, shows upon its face that it does not purport to cover lands not granted to the Southern Pacific Railroad Company; and upon the further ground that the records of the Interior Department and of the United States Land Office at Los Angeles, and the United States Land Office at San Francisco, and the records of the office of the Secretary of State for California, and the public laws of the United States and of California, show that the Southern Pacific Railroad Company, defendant herein, has no interest in these lands.)

A. I am.

Q. Are you the purchaser by deed of a portion of the land involved?

(Same objection.)

A. I so understand.

Mr. Redding — The defendants offer in evidence the deed from the Southern Pacific Railroad Company, D. O. Mills and Gerrit L. Lansing, Trustees, No. 3826, to James B. Randol, dated October 6th, 1884, for the following described land, situated in the County of Los Angeles, State of California, to-wit: All of Section Twenty-five and the south half of Section Thirty-five, in Township Six North, Range 12 West, San Bernardino Base and Meridian, containing 960 acres?

(Same objection.)

The Witness—I purchased that land from the Southern Pacific Railroad Company.

Mr. Redding—Q. The recital in the deed states that you paid for it the sum of \$2400, is that so?

(Same objection.)

A. It is.

Q. Is that your original deed, which you had recorded for the property?

(Same objection.)

A. It is the deed.

Mr. Redding—I will ask to have that marked "Defendants' Exhibit before the Special Examiner, No. 97," and I will ask that a certified copy of it be made in lieu of the original, in accordance with our stipulation heretofore made.

Mr. Call—I have no objection to a copy being made and standing in lieu of the original, subject to the objections made.

(Deed No. 3,826, Southern Pacific Railroad Co., D. O. Mills and Gerrit L. Lansing, Trustees, to James B. Randol, dated October 6th, 1884, is marked by the Special Examiner "Defendants' Exhibit before the Special Examiner, No. 97, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

Mr. Redding—Q. Are you a citizen of the United States?

(Same objection.)

A. Yes, sir; and always have been.

Q. Where were you born?

(Same objection.)

A. In New York.

Q. Have you been in quiet and peaceful possession of this property since the date of your purchase?

(Same objection.)

A. I have.

Q. Have you paid all the taxes, State, county, and municipal, which have been levied and assessed upon the land since your purchase?

(Same objection.)

A. I have.

Q. Did the Southern Pacific Railroad Company represent to you at the time you purchased this land that it was the owner of the property you purchased?

(Same objection.)

A. It certainly did, otherwise I should not have purchased the land.

Q. Did you rely on those representations?

(Same objection.)

A. I did.

Q. Did you purchase in good faith?

(Same objection.)

A. I did.

Q. For value received?

(Same objection.)

A. I did. I paid the amount named in that deed.

Q. To whom did you pay that money?

(Same objection.)

A. To some representative of the Southern Pacific Railroad Company I cannot recall now.

Q. Was it Jerome Madden, in the Land Department?

(Same objection.)

A. I think it was.

Q. In what form did you pay the money?

(Same objection.)

A. By checks.

Q. Did you have an account in the bank at the time upon which the check was drawn?

(Same objection.)

A. I did.

Q. In gold coin?

(Same objection.)

A. Yes, sir.

Q. Do you know whether the check was turned into the bank and gold received by the Southern Pacific Railroad Company for the check?

(Same objection.)

A. The checks were returned to me by the bank, marked paid.

Q. Did you have any notice at the time of your purchase of this property of any conflict or contest, or difference existing between the United States of America and the Southern Pacific Railroad Company in reference to the title to this land?

(Same objection.)

A. Not in any way whatever; the first notice I had of it was when my attention was called to this suit.

CROSS-EXAMINATION.

Mr. Call—Q. When you bought this land from the railroad company, or made contract to purchase it, how did you suppose the railroad company got title to it?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross-examination.)

A. I do not know that I entered into that; it was represented that they were the owners of the land.

Q. Did you know they had a land grant from Congress?

(Same objection.)

A. I knew generally they had a land grant from Congress.

Q. Did you suppose they got it by the land grant from Congress, or in some other way?

(Same objection.)

A. I did not suppose anything about it; I merely know they represented they were owners of the land, and I took it. I did not inquire into their title in any way at all.

Q. You did not investigate their title?

(Same objection.)

A. They said they had a title, and I took it for granted they had.

Q. You did not investigate the records of the County Recorder's office?

(Same objection.)

A. No, sir.

Q. Nor the General Land Office at Washington?

(Same objection.)

A. No, sir.

Q. Nor the United States Land Office at Los Angeles?

(Same objection.)

A. No, sir.

Q. Nor the United States Land Office at San Francisco?

(Same objection.)

A. No, sir.

Q. Nor any other office?

(Same objection.)

A. No, sir.

Q. Did you ever read the Acts of Congress relating to grants to the Southern Pacific Railroad?

(Same objection.)

A. I never did.

Q. Then you do not know the terms and conditions of those grants?

(Question objected to by Mr. Redding as calling for the opinion of the witness, and as a legal conclusion, as incompetent, immaterial and irrelevant, and not the best evidence.)

A. No, sir.

JAMES B. RANDOL.

Testimony of D. G. Scofield:

D. G. Scofield, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

(The testimony of this witness was taken on October 3d, the witness Lansing being temporarily withdrawn, and is placed at this point in the record for convenience in signing.)

DIRECT EXAMINATION.

Mr. Redding—Q. Are you an officer of the Pacific Coast Oil Company? A. I am.

Q. What officer? A. Vice-President.

(It is admitted that the Pacific Coast Oil Company is a corporation, organized under the laws of the State of California.)

Mr. Redding—Q. In reference to the contracts of purchase standing in your name, and just introduced, are they still in existence, and have you complied with their terms up to the present time?

(Objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence; and upon the further ground that the lands in suit herein were excepted out of the grant to the Southern Pacific Railroad Company, made by the Act of Congress of March 3, 1871, by the terms and conditions of said Act; and upon the further ground that the lands in suit herein were withdrawn for the Atlantic & Pacific Railroad Company, and were reserved before the Southern Pacific Railroad Company filed its map of definite location; and upon the further ground that the matters in issue in this suit have been finally decided and adjudicated by the Supreme Court of the United States, and the United States Circuit Court for the Southern District of California, as shown by the records of such decisions in evidence herein; and upon the further ground that the Southern Pacific Railroad Company, to which the grant was made by the Act of Congress of March 3d, 1871, by entering into the articles of consolidation and amalgamation in evidence herein, marked Master's Exhibits 1, 2 and 3, and Defendants' Exhibit before the Special Examiner, Nos. 88 and 89, has surrendered to the United States all interest in these lands, and did thereby surrender to the United States in each case of consolidation all

right to earn such lands by constructing a railroad; and upon the further ground that the mortgage of 1875 to Lloyd Tevis and D. O. Mills, Trustees, shows upon its face that it does not purport to cover lands not granted to the Southern Pacific Railroad Company; and upon the further ground that the records of the Interior Department and of the United States Land Office at Los Angeles, and the United States Land Office at San Francisco, and the records of the office of the Secretary of State for California, and the public laws of the United States and of California, show that the Southern Pacific Railroad Company, defendant herein, has no interest in these lands; and upon the further ground that it appears from the contract referred to that the Southern Pacific Railroad Company, the vendor, has no title from the United States to such land, and that the contract is a conditional one, carrying on its face full notice to the alleged purchaser of the want of title in the vendor; and upon the further ground that the contract is not executed, and only a portion of the purchase price has been paid thereon.)

A. Yes, sir.

Q. In all particulars?

(Same objection.)

A. Yes, sir.

Mr. Redding—Defendants offer in evidence declaration of trust from George Loomis to the Pacific Coast Oil Company, with reference to certain lands in suit here, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 103."

(Same objection.)

Mr. Redding—Q. Do you know George Loomis' signature when you see it?

(Same objection.)

A. Yes, sir; I witnessed that document myself.

Q. Is that his signature? (Exhibit 103 shown witness.)

(Same objection.)

A. Yes, sir.

Q. Did you witness his execution of that document?

(Same objection.)

A. Yes, sir.

Mr. Redding—We ask that the same method of substitution may be allowed in regard to a copy of this, instead of the original.

Mr. Call—There is no objection to that being done, subject to the objection that it is incompetent, immaterial and irrelevant, and not the best evidence; and upon the further ground that the lands in suit herein were excepted out of the grant to the Southern Pacific Railroad Company, made by the Act of Congress of March 3, 1871, by the terms and conditions of said Act; and upon the further ground that the lands in suit herein were withdrawn for the Atlantic and Pacific Railroad Company, and were reserved, before the Southern Pacific Railroad Company filed its map of definite location; and upon the further ground that the matters in issue in this suit have been finally decided and adjudicated by the Supreme Court of the United States, and the United States Circuit Court for the Southern District of California, as shown by the records of such decisions in

evidence herein; and upon the further ground that the Southern Pacific Railroad Company, to which the grant was made by the Act of Congress of March 3, 1871, by entering into the articles of consolidation and amalgamation in evidence herein, marked Master's Exhibits 1, 2, and 3, and Defendants' Exhibits before the Special Examiner, Nos. 88 and 89, has surrendered to the United States all interest in these lands, and did thereby surrender to the United States in each case of consolidation, all right to earn such lands by constructing a railroad; and upon the further ground that the mortgage of 1875 to Lloyd Tevis and D. O. Mills, Trustees, shows upon its face that it does not purport to cover lands not granted to the Southern Pacific Railroad Company; and upon the further ground that the records of the Interior Department and of the United States Land Office at Los Angeles, and the United States Land Office at San Francisco, and the records of the office of the Secretary of State for California, and the public laws of the United States and of California, show that the Southern Pacific Railroad Company, defendant herein, has no interest in these lands; and upon the further ground that it appears from the contract referred to, that the Southern Pacific Railroad Company, the vendor, has no title from the United States to such land, and that the contract is a conditional one, carrying on its face full notice to the alleged purchaser of the want of title in the vendor; and upon the further ground that the contract is not executed, and only a portion of the purchase price has been paid thereon.)

(Declaration of trust, George Loomis to Pacific Coast Oil Company, dated December 8th, 1891, is

marked "Defendants' Exhibit before the Special Examiner, No. 103, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

Mr. Redding—Defendants next offer in evidence contract dated April 25th, 1889, for a deed between the Southern Pacific Railroad Company and George Loomis, No. 10,077, for the following described land: Northeast quarter of northeast quarter, south half of northeast quarter, northwest quarter of northwest quarter, south half of northwest quarter, and south half of Section 15, Township 3 North, Range 16 West, San Bernardino Base and Meridian, containing 560 00-100 acres, for the sum of \$2,800; and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 104."

(Objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence; and upon the further ground that the lands in suit herein were excepted out of the grant to the Southern Pacific Railroad Company made by the Act of Congress of March 3, 1871, by the terms and conditions of said Act; and upon the further ground that the lands in suit herein were withdrawn for the Atlantic & Pacific Railroad Company, and were reserved before the Southern Pacific Railroad Company filed its map of definite location; and upon the further ground that the matters in issue in this suit have been finally decided and adjudicated by the Supreme Court of the United States and the United States Circuit Court for the Southern District of California, as shown by the records of such decisions in evidence herein; and upon the further ground that the South-

ern Pacific Railroad Company, to which the grant was made by the Act of Congress of March 3d, 1871, by entering into the Articles of Consolidation and Amalgamation in evidence herein, marked Master's Exhibits 1, 2, and 3, and Defendants' Exhibits before the Special Examiner, Nos. 88 and 89, has surrendered to the United States all interest in these lands, and did thereby surrender to the United States in each case of consolidation all right to earn such lands by constructing a railroad; and upon the further ground that the mortgage of 1875 to Lloyd Tevis and D. O. Mills, Trustees, shows upon its face that it does not purport to cover lands not granted to the Southern Pacific Railroad Company; and upon the further ground that the records of the Interior Department, and the United States Land Office at Los Angeles, and the United States Land Office at San Francisco, and the records of the office of the Secretary of State for California, and the public laws of the United States and of California, show that the Southern Pacific Railroad Company, defendant herein, has no interest in these lands; and upon the further ground that it appears from the contract referred to that the Southern Pacific Railroad Company, the vendor, has no title from the United States to such lands, and that the contract is a conditional one, carrying on its face full notice to the alleged purchaser of the want of title in the vendor; and upon the further ground that the contract is not executed, and only a portion of the purchase price has been paid thereon; and the further objection that this suit was brought and was pending before the contract referred to was entered into.)

(Contract for a deed, No. 10,077, Southern Pacific Railroad Company to George Loomis, dated April 25th, 1889, is marked "Defendants' Exhibit before the Special Examiner, No. 104," and a certified copy thereof is attached hereto.)

Mr. Redding—Defendants next offer in evidence deed No. 9,416, from the Southern Pacific Railroad Company, D. O. Mills and G. L. Lansing, Trustees, to the Pacific Coast Oil Company, dated March 5th, 1888, for the land therein described, namely: the northeast quarter, northeast quarter of northwest quarter, and Lots 1, 2, 3, and 4 of Section 19, Township 3 North, Range 15 West, San Bernardino Base and Meridian, containing 313 82-100 acres, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 105."

(Same objection.)

(Quitclaim Deed No. 9416, Southern Pacific Railroad Company, D. O. Mills and Gerrit L. Lansing, Trustees, to Pacific Coast Oil Company, dated March 5th, 1888, is marked "Defendants' Exhibit before the Special Examiner, No. 105, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

Mr. Redding—Defendants next offer in evidence contract for a deed, No. 10,320, between the Southern Pacific Railroad Company and George Loomis, dated May 8th, 1890, for the following described land: The south half of northeast quarter, and fractional south half of northwest quarter of Section 7, Township 3 North, Range 15 West, San Bernardino Base and Meridian, containing 156 17-100 acres, and ask that it

be marked "Defendants' Exhibit before the Special Examiner, No. 106."

(Same objection.)

(Contract for a deed, No. 10,320, Southern Pacific Railroad Company to George Loomis, dated May 8th, 1890, is marked "Defendants' Exhibit before the Special Examiner, No. 106, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

Mr. Redding—Defendants next offer in evidence contract for a deed, No. 10,321, Southern Pacific Railroad Company to George Loomis, dated May 8th, 1890, for the following described land: The southeast quarter of Section 7, Township 3 North, Range 15 West, San Bernardino Base and Meridian, containing 160 acres, and ask that the same be marked "Defendants' Exhibit before the Special Examiner, No. 107."

(Same objection.)

(Contract for a deed, No. 10,321, Southern Pacific Railroad Company to George Loomis, dated May 8th, 1890, is marked "Defendants' Exhibit before the Special Examiner, No. 107, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

Mr. Redding—Defendants next offer in evidence contract for a deed, No. 10,322, between the Southern Pacific Railroad Company and George Loomis, dated May 8th, 1890, for the following described lands: The fractional southwest quarter of Section 7, Township 3 North, Range 15 West, San Bernardino Base and Meridian, containing 153 48-100 acres, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 108."

(Same objection.)

(Contract for a deed, Southern Pacific Railroad Company to George Loomis, dated May 8th, 1890, is marked "Defendants' Exhibit before the Special Examiner, No. 108; Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

Mr. Redding—Defendants next offer in evidence contract for a deed, No. 10,323, between the Southern Pacific Railroad Company and George Loomis, dated May 8th, 1890, for the following described lands: The northeast quarter of Section 7, Township 3 North, Range 16 West, San Bernardino Base and Meridian, containing 160 acres, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 109."

(Same objection.)

(Contract for a deed, No. 10,323, Southern Pacific Railroad Company to George Loomis, dated May 8th, 1890, is marked "Defendants' Exhibit before the Special Examiner, No. 109, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto,)

Mr. Redding—Defendants next offer in evidence contract for a deed, No. 10,324, between the Southern Pacific Railroad Company and George Loomis, dated May 8th, 1890, for the following described lands: The northwest quarter of Section 7, Township 3 North, Range 16 West, San Bernardino Base and Meridian, containing 160 acres, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 110."

(Same objection.)

(Contract for a deed, Southern Pacific Railroad Company to George Loomis, dated May 8th, 1890, No. 10,324, is marked "Defendant's Exhibit before the Special Examiner, No. 110, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

Mr. Redding—Defendants next offer in evidence contract for a deed, No. 10,325, between the Southern Pacific Railroad Company and George Loomis, dated May 8th, 1890, for the following described lands: Southeast quarter of Section 7, Township 3 North, Range 16 West, San Bernardino Base and Meridian, containing 160 acres, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 111."

(Same objection.)

(Contract for a deed, No. 10,325, Southern Pacific Railroad Company to George Loomis, dated May 8th, 1890, is marked "Defendants' Exhibit before the Special Examiner, No. 111, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

Mr. Redding—Defendants next offer in evidence Contract for a deed, No. 10,326, between the Southern Pacific Railroad Company and George Loomis, dated May 8th, 1890, for the following described land: The southwest quarter of Section 7, Township 3 North, Range 16 West, San Bernardino Base and Meridian, containing 160 acres, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 112."

(Same objection.)

(Contract for a deed, No. 10,326, Southern Pacific Railroad Company to George Loomis, dated May 8, 1890, is marked "Defendants' Exhibit before the Special Examiner, No. 112, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

Mr. Redding—Defendants next offer in evidence contract for a deed, No. 10,327, between the Southern Pacific Railroad Company and George Loomis, dated May 8th, 1890, for the following described lands: The west half of southwest quarter, Section 9, Township 3 North, Range 16 West, San Bernardino Base and Meridian, containing 80 acres, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 113."

(Same objection.)

(Contract for a deed, No. 10,327, Southern Pacific Railroad Company to George Loomis, dated May 8th, 1890, is marked "Defendants' Exhibit before the Special Examiner, No. 113, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

Mr. Redding—Defendants next offer in evidence contract for a deed, No. 10,328, between the Southern Pacific Railroad Company and George Loomis, dated May 8th, 1890, for the following described land: Lots 1, 2, 3 and 4, of Section 17, Township 3 North, Range 16 West, San Bernardino Base and Meridian, containing 113 51-100 acres, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 114."

(Same objection.)

(Contract for a deed, No. 10,328, Southern Pacific Railroad Company to George Loomis, dated May 8th, 1890, is marked "Defendants' Exhibit before the Special Examiner, No. 114, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

Mr. Redding—Defendants next offer in evidence contract for a deed, Southern Pacific Railroad Company to George Loomis, dated May 8th, 1890, for the following described land: The northeast quarter of northeast quarter of Section 21, Township 3 North, Range 16 West, San Bernardino Base and Meridian, containing 40 acres, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 115.

(Same objection.)

(Contract for a deed, Southern Pacific Railroad Company to George Loomis, dated May 8th, 1890, No. 10,329, is marked "Defendants' Exhibit before the Special Examiner, No. 115, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

Mr. Redding—Defendants next offer in evidence contract for a deed, No. 10,330, between the Southern Pacific Railroad Company and George Loomis, dated May 8th, 1890, for the following described land: Fractional northeast quarter of Section 1, Township 3 North, Range 17 West, San Bernardino Base and Meridian, containing 152 5-100 acres, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 116."

(Same objection.)

(Contract for a deed, No. 10,330, Southern Pacific Railroad Company to George Loomis, dated May 8th,

1890, is marked "Defendants' Exhibit before the Special Examiner, No. 116, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

Mr. Redding—Defendants next offer in evidence contract for a deed, No. 10,331, between the Southern Pacific Railroad Company and George Loomis, dated May 8th, 1890, for the following described land: Fractional northwest quarter Section 1, Township 3 North, Range 17 West, San Bernardino Base and Meridian, containing 144 65-100 acres, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 117."

(Same objection.)

(Contract for a deed, No. 10,331, Southern Pacific Railroad Company to George Loomis, dated May 8th, 1890, is marked "Defendants' Exhibit before the Special Examiner, No. 117, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

Mr. Redding—Defendants next offer in evidence contract for a deed, No. 10,332, between the Southern Pacific Railroad Company and George Loomis, dated May 8th, 1890, for the following described land: The southeast quarter of Section 1, Township 3 North, Range 17 West, San Bernardino Base and Meridian, containing 160 acres, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 118."

(Same objection.)

(Contract for a deed, No. 10,332, Southern Pacific Railroad Company to George Loomis, dated May 8th, 1890, is marked "Defendants' Exhibit before the Special Examiner, No. 118, Stephen Potter, Special

Examiner," and a certified copy thereof is attached hereto.)

Mr. Redding—Defendants next offer in evidence contract for a deed, No. 10,333, between the Southern Pacific Railroad Company and George Loomis, dated May 8th, 1890, for the following described land: The southwest quarter of Section 1, Township 3 North, Range 17 West, San Bernardino Base and Meridian, containing 160 acres, and ask that it be marked, "Defendants' Exhibit before the Special Examiner, No. 119."

(Same objection.)

(Contract for a deed, No. 10,333, Southern Pacific Railroad Company to George Loomis, dated May 8th, 1890, is marked "Defendants' Exhibit before the Special Examiner, No. 119, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

Mr. Redding—I offer these with the understanding that copies certified by the Special Examiner may be substituted in lieu of the originals.

Mr. Call—There is no objection to the Special Examiner making copies to stand in lieu of the originals, subject to the objections named.

Mr. Redding—Q. Do you know whether or not the Pacific Coast Oil Company paid the moneys named in said contracts and deeds, as having been received by the Southern Pacific Railroad Company?

(Same objection.)

A. I do.

Q. In good faith?

(Same objection.)

A. Yes, sir.

Q. In gold coin of the United States?

(Same objection.)

A. Paid by checks on Wells, Fargo & Company's Bank.

Q. Do you know whether the money on those checks was received by the railroad company?

(Same objection.)

A. Yes, sir.

Q. Did the Pacific Coast Oil Company enter into possession of the land and premises in pursuance to said deeds and said contracts?

(Same objection.)

A. It did.

Q. Has this company paid all the State, county and municipal taxes levied and assessed upon said lands since the date of the purchases therein named?

(Same objection.)

A. They have.

Q. And all other assessments of every nature?

(Same objection.)

A. Yes, sir.

Q. Do you know as an officer of the Company and Vice-President thereof, whether or not the Southern Pacific Railroad Company represented to the Pacific Coast Oil Company, and to George Loomis, the Trustee, that it was the owner of these lands at the time the contracts and deeds were entered into and executed?

(Same objection.)

A. They did.

Q. Did the Pacific Coast Oil Company rely on such representations?

(Same objection.)

A. It did.

Q. Are you one of the Directors of this organization?

(Same objection.)

A. I am.

Q. And also Vice-President, as I understand you to say?

(Same objection.)

A. Yes, sir.

Q. Did the Pacific Coast Oil Company have notice of any contest of claim of the Government of the United States and the Southern Pacific Railroad Company with reference to the title of this land at the time of these purchases?

(Same objection.)

A. I think at the time of the later ones that they knew of this Colton Marble and Lime Company case, that is my impression.

Q. How about the purchases in 1888, and the deed in 1885?

(Same objection.)

A. They had no notice at that time.

Q. Do you know whether the Pacific Coast Oil Company and George Loomis, as Trustee, are purchasers of these lands in good faith?

(Same objection.)

A. Yes, sir; they are.

Q. For value received?

(Same objection.)

A. Yes, sir.

Q. Without notice?

(Same objection.)

A. Yes, sir.

Q. What improvements, if any, have been made by the Pacific Coast Oil Company upon these lands since the date of these contracts of purchase and deeds?

(Same objection.)

A. Buildings, tankage, derricks, pipe lines, water and oil tanks, machine shop, boiler shop, various improvements incidental to our business.

Q. What is the amount of money that has been expended, in round numbers?

(Same objection.)

A. About \$150,000 or \$160,000.

Q. Have these improvements inured permanently to the soil?

(Same objection.)

A. Yes, sir.

Q. And become a part of the realty?

(Same objection.)

A. Yes, sir.

Q. Do you know whether the Pacific Coast Oil Company has kept all of the obligations on its part, and George Loomis' part, to be kept as set forth and contained in these contracts of purchase?

(Same objection).

A. Yes, sir.

Q. Up to date?

(Same objection.)

A. Yes, sir.

CROSS-EXAMINATION.

Mr. Call—How long have you been Vice-President of the Pacific Coast Oil Company?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and not proper cross-examination.)

A. Since 1884; I think July, 1884.

Q. Are you a director?

(Same objection.)

A. Yes, sir. I have been a director since its incorporation in 1879.

Q. Who are the other directors?

(Same objection.)

A. Charles N. Felton, Charles N. Felton, Jr., George Loomis, Lloyd Tevis and myself.

Q. Did you investigate the source of title of the Southern Pacific Railroad Company when the Pacific Coast Oil Company made these contracts?

(Same objection.)

A. We talked it over and discussed the matter with our attorney at the time.

Q. Did you yourself make any investigation?

(Same objection.)

A. I was the medium by which the interviews were had with our attorney in the matter?

Q. Did you personally examine any of the public records?

(Same objection.)

A. No, sir.

Q. Did you examine the records of the United States Land Office?

(Same objection.)

A. I did not examine any records personally.

Q. Did you examine the terms and conditions of the Act of 1871?

(Same objection.)

A. Not personally.

Q. Do you know whether your attorney did or not?

(Same objection.)

A. I think he did, because he seemed to be very familiar with the question, and I know he told me at the time that the weight of all the decisions was that the grant was a grant *in presenti*, and that whether they had a patent or not was not material.

Q. Do you know whether he examined the terms or not?

(Same objection.)

A. I never asked him the question, but he seemed very familiar with the subject.

Q. Did he make any reference to you in regard to the provisions of the Act of March 3d, 1871, and the Act of 1866, providing that lands granted to another company, or previously granted, were excepted out of the grant?

(Same objection.)

A. I do not think he went into a discussion of that kind.

Q. Did he refer to the condition that the lands reserved were not granted to the Southern Pacific Railroad?

(Same objection.)

A. No, sir.

Q. Who paid the money to the Southern Pacific Railroad Company upon these contracts?

(Same objection.)

A. It was paid by the Pacific Coast Oil Company by a check signed by its President and Secretary.

Q. You did not pay it personally?

(Same objection.)

A. No, sir, but I took the checks and contracts as a medium of transfer.

Q. They passed through your hands?

(Same objection.)

A. Yes, sir.

Q. Did you see the payments made?

(Same objection.)

A. I delivered the checks in person to Jerome Madden.

Q. Do you know what knowledge Mr. Felton had of the public records in reference to the grant to the Southern Pacific Railroad and the condition of these lands?

(Same objection.)

A. None of the directors, except Mr. Loomis and myself, took any personal part in the matter whatever; it was simply a meeting of the Board authorizing the President to make those purchases.

Q. Do you know of your own knowledge anything about what the other directors knew in reference to the public records and Acts of Congress?

(Same objection.)

A. I do not; Mr. Felton has been absent from here for the greater part of the time for the last four years, and Mr. Felton, Jr., has taken no particular part in the business; none of them take any part in running the business.

Q. When did you first learn that the government claimed lands in the overlapping limits of the grants to the Atlantic and Pacific Railroad Company and the Southern Pacific Railroad Company?

(Same objection.)

A. As I told you a little while ago, the first I ever knew of it personally was when the Colton Marble and Lime Company suit was called to my attention, I suppose, which was in 1888 or 1889, somewhere along there.

Q. What year was that in?

(Same objection.)

A. I could not tell the exact year; that matter was called to my attention from the fact I had a squatter come down there who disputed my title, and run a ditch over my land, and kept me out of possession nearly two years; that was after I had bought lands on 25, 19, and 31.

Q. Can't you place the date as to when that was?

(Same objection.)

A. I could not exactly say.

Q. How many acres are claimed by the Pacific Coast Oil Company?

(Same objection.)

A. I could not tell without counting up the contracts; there are a good many matters I do not pretend to carry in my mind; the documents will show for themselves.

Q. Are there any controversies between the Pacific Coast Oil Company and parties claiming land as mineral as to any of these lands?

(Same objection.)

A. No, sir; we hold all the mineral titles ourselves.

Q. You have located them yourselves?

(Same objection.)

A. We hold them, we bought out all the original locators in that country.

Q. You hold the Government title, then, as well as the railroad title, subject to the compliance with the mineral laws?

(Same objection.)

A. We hold the Government title to some of them, not all of them; we have no one claiming adversely to us any titles on any of these lands with the exception of one piece of 160 acres, and that is not mineral land.

Q. Did you yourself, with others of your company, make mineral locations on this land?

(Same objection.)

A. Do you mean under these contracts?

Q. Have you at this present moment?

(Same objection.)

A. Some of it, yes, sir; years ago.

Q. Have not you located some of it recently?

(Same objection.)

A. No, sir; none whatever since the dates of these contracts.

Q. You located it before that?

(Same objection.)

A. Some of it; some of it is not in any way located.

Q. You say there are no contests pending in the Interior Department in reference to the mineral character of this land?

(Same objection.)

A. No, sir.

Q. Has not the Government of the United States reserved these lands, or a considerable portion of them, as mineral?

(Same objection.)

A. There are no mineral reservations on any of these lands at present, as I am informed; on the contrary, I know as a matter of fact that a portion of them that were located as mineral lands when the parties applied for them as mineral they were rejected on the ground that the mineral character was not proven.

Q. How long have you been acquainted with the land?

(Same objection.)

A. Since July, 1875.

Q. Is the land in the indemnity limits or primary limits of the grant to the Southern Pacific?

(Same objection.)

A. These lands are within the primary limits, most of them.

Q. Are some of them in the indemnity limits?

(Same objection.)

A. I think a little of it is in the indemnity limits; yes, sir.

Q. Did you locate some of it as mineral land in 1875?

(Same objection.)

A. No, we made no locations in 1875, but we bought out a great many old locators.

Q. Who had located as mineral?

(Same objection).

A. It was on some of those particular locations which I spoke of a little while ago, where they were rejected, as the mineral character was not proven, on the ground that a mere seepage of oil and asphaltum did not constitute mineral lands, and applications for

patents for about 1,800 or 1,900 acres were rejected at that time.

RE-DIRECT EXAMINATION.

Mr. Redding—Q. You stated that you had some notice of litigation concerning these questions in 1888 or 1889; do you mean that you got notice in reference to these particular lands at that time?

(Same objection.)

A. No, sir; not these lands at all; to the lands in San Bernardino county, and in the neighborhood of Colton, that were involved in the Colton Marble and Lime Company suit.

Q. Had you any notice at the time the Directors authorized the purchase, or at the time the Pacific Coast Oil Company and George Loomis contracted to purchase, and purchased, these lands, did you, he, they or it, have any notice whatever of any contest, with reference to these lands, being in existence between the Government and the Southern Pacific Railroad Company?

(Same objection.)

A. No, sir; not as to these lands; these lands were purchased under the advice of our attorney that the railroad were the owners.

Q. Were they also purchased on the representations of the Southern Pacific Railroad Company that they were the owners?

(Same objection.)

A. Yes, sir.

Testimony of D. G. Scofield:

Recalled for further cross-examination.

(This portion of the testimony of this witness was taken on October 9th, but is inserted at this point in the record for convenience in signing.)

CROSS-EXAMINATION.

(Resumed.)

Mr. Call—It is understood, Mr. Redding, I believe, that the photograph marked "Defendants' Exhibit before the Special Examiner, No. 102," is to be withdrawn?

Mr. Redding—Q. Mr. Scofield, I understand that refers to land not involved in the suit?

A. It is not involved in the suit; that is, I am so informed this morning, and I presume it is so. That is situated in Township 1 North, Range 6 West, San Bernardino Base and Meridian.

Mr. Redding—Very well, Mr. Call, it is satisfactory to withdraw that photograph, Exhibit No. 102.

(It is agreed between counsel that "Defendants' Exhibits before the Special Examiner, Nos. 98, 99, 100, 101 and 102," having been withdrawn, by consent, from the record, that the testimony in regard to said exhibits and the lands described therein, may be eliminated from the record by the Special Examiner drawing a line through the same, it being understood that this agreement extends to the elimination of the original direct examination and cross-examination of the witness.)

(In accordance with the foregoing agreement between counsel for complainants and defendants, I have

eliminated from this record the direct-examination and cross-examination, as originally appearing herein, of the witness D. G. Seofield, by drawing a line through each page thereof, and signing my initials in the margin of such pages.

STEPHEN POTTER,
Special Examiner.)

(I have also, in accordance with the agreement between counsel for complainants and defendants, withdrawn "Defendants' Exhibit before the Special Examiner, No. 102," from this record, and returned the same to the witness.

STEPHEN POTTER,
Special Examiner.)

Mr. Call—Q. In whose names were the contracts from the Southern Pacific Railroad Company taken, involving lands in this suit?

A. In the name of George Loomis, Trustee for the Pacific Coast Oil Company.

Q. Has George Loomis any connection with the Pacific Coast Oil Company? A. Yes, sir.

Q. What connection?

A. He is the President.

Q. Was he at the time the contracts were taken?

A. Yes, sir.

Q. Was he at that time also a director?

A. Yes, sir.

Q. How many oil wells have you on these lands?

A. It would be a little hard to answer that question without referring to our maps, from the fact that we also have oil wells on the even sections, which are, of course in no way involved.

Q. Approximately, what would you say?

A. I should say, fifteen or twenty, approximately.

Q. Can you state how much oil you have taken out of those wells?

A. I could not, without referring to our records.

Q. What is the price of oil?

A. That also would necessitate looking up, from the fact that we do not sell any oil in a crude state.

Q. How much do you receive from the oil?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and having nothing to do with this case.)

A. I prefer not to answer that, as going into private matters, unless it is necessary that I should do so; of course there are others in the same business, and it would be giving our business away.

Q. What is the market value of oil?

(Same objection).

A. There are six or eight different products come out of this oil, and the prices are different, the values are different, and it fluctuates from time to time.

Q. What is the market value of crude petroleum?

(Same objection.)

A. Ours has none, because we do not sell in a crude state.

Q. What is the market value of crude petroleum in this market?

(Question objected to by Mr. Redding as incompetent, immaterial and irrelevant, and calling for the opinion of the witness.)

A. I have no objection to state that there is none sold in the San Francisco market; in Los Angeles the

price varies from \$1.75 to \$2 per barrel; the quality of the crude oil varies greatly with different localities.

Q. What do you pay for transporting oil from your oil wells to Los Angeles?

(Same objection.)

A. We do not transport any, we do not market any.

Q. Where do you transport it to?

(Same objection.)

A. It all goes to Alameda Point, opposite to San Francisco.

Q. What do you pay for transporting it there?

(Same objection.)

A. I think that is going into our private business.

Q. Do you refuse to answer the question?

(Same objection.)

A. Yes, sir.

Mr. Call—I move to exclude all of the testimony of the witness heretofore given, on the ground that he refuses to answer the question.

Mr. Redding—I advise the witness to refuse to answer the question.

The Witness—I simply do not wish to answer questions that I do not see are at all material to this inquiry, as disclosing the nature of our business, which others, who are in the same line could take advantage of; of course oils are taken from other lands that are in no way involved in this action; the larger portion of the oil is taken from lands not involved in this action.

Mr. Call—Q. What is the value of crude petroleum at the wells?

(Same objection.)

A. We do not sell any crude petroleum from our wells, and put no valuation on it there.

Q. What is the value of it there?

(Same objection.)

A. I do not know how you would fix a value there when we do not market any of it in that state.

Q. Do you know what the value of it is there?

(Same objection.)

A. I of course, could fix a valuation on it from time to time, from month to month, by going through all the various figures of cost of transportation, cost of refining, cost of marketing and splitting up the different products under their various heads, and see what they net, and deduct expenses.

Q. Approximately, what is it worth at the wells?

(Same objection.)

A. I prefer not to answer the question, as being in the nature of disclosing our private business.

Q. You refuse to answer the question, then?

(Same objection.)

A. I do, upon the same grounds as before.

Mr. Redding—I instruct the witness not to answer the question.

Mr. Call—I move to exclude all the testimony of this witness on the ground that he refuses to answer this question.

Q. How deep are the wells which you dug on these lands?

(Same objection.)

A. Our wells vary all the way in depth from 1200 to 1300 feet to 2350 feet.

Q. I ask you to examine your records and to state to the Special Examiner how many wells you have on this land, and the depth of each?

(Same objection.)

Mr. Redding—Q. Can you not speak generally?

A. No, I could not, without looking at the maps, because the wells have been drilled without any reference to this matter, and the greater part of them are on even sections, and patented lands, as mineral patents.

Mr. Call—Q. How much money do you say you have expended on these lands in improving them?

A. In the neighborhood of \$150,000 or \$160,000.

Q. What did you spend that money in?

A. Buildings, tankage, pipe lines, machine shop, boiler shops, and various improvements incidental to our business, oil tanks, &c.

Q. Were not those improvements, water tanks, pipe lines, machine shops, also used for the oil production on other lands in the even sections?

A. Yes, sir, part of the whole system.

Q. How many acres of land do you hold in even sections?

A. I should have to refer to our records to answer that question.

Q. About how much?

A. Well, I would not care to state, because I could give it exactly by reference to the maps.

Q. I will ask you to examine your maps, and books, and records, and state to the Special Examiner how many acres of oil lands you hold which are on even numbered sections.

Mr. Redding—I will suggest that the witness say there are a blank number of acres for his answer now, and the amount can be filled in when ascertained.

A. There are 1180 acres of oil lands held by us on even numbered sections.

Mr. Redding—Q. You have stated that on railroad lands involved in this suit you have expended in the neighborhood of \$150,000? A. Yes, sir.

Mr. Call—Q. You say you have expended \$150,000 on lands involved in this suit? A. Yes, sir.

Q. That they also are used—

A. (interrupting)—Well, it is a part of the whole general system.

Q. And for the transportation and refinement of oil?

A. Transportation and handling; we do not refine there.

Q. The transportation and handling on other lands as well as here?

A. Yes, sir.

Q. How much have you spent in buildings?

A. All those questions would be very hard to tell without going into—

Q. (interrupting)—Where are your buildings situated?

A. We have them scattered all along; we have fifteen or twenty, I should judge, on one piece, where a great many of our employees reside. I think that is in Section 1, Township 3 North, Range 17 West.

Q. How much crude petroleum have you produced on these lands involved in this suit?

(Same objection.)

A. I decline to answer that on the ground that it is giving away our private business.

Mr. Redding—I instruct the witness not to answer.

Mr. Call—I move to exclude all the testimony of this witness on the ground that he refuses to answer this question.

Q. Have you produced a considerable quantity?

(Same objection.)

A. Yes, sir.

Q. What is the average capacity of those wells per day?

(Same objection).

A. I decline to answer, on the same ground as heretofore stated.

Mr. Redding—You are instructed not to answer.

Mr. Call—I move to exclude all the testimony of the witness, on the ground that he refuses to answer this question.

Q. Then, I understand, Mr. Scofield, that you refuse to state how much money you have received from oil produced on the lands involved in this case?

Mr. Redding—I instruct the witness not to answer the question.

A. I decline to answer it, on the grounds heretofore given.

Mr. Call—I move to exclude all the testimony of this witness, upon the ground that he refuses to answer the question.

Q. Do you know when the contracts from the defendant railroad company were made to George Loomis for these lands?

A. Yes, sir.

Q. Were you present when they were made?

A. I was the medium of transfer between the Southern Pacific Railroad Company and George Loomis.

Q. Were they each of them actually made on the dates which they bear?

A. I assume, yes.

Q. Do you know whether they were or not?

A. I could tell by referring to our check books; the checks were given, for I took the checks myself to Mr. Jerome Madden, and took the contracts.

Mr. Redding—Q. Do you mean the checks in payment for the amounts due? A. Yes, sir.

Mr. Call—Q. Then can you or can you not now state whether those contracts were actually made on the dates on which they purport to be made?

A. Approximately within a very few days?

Q. What do you mean by a few days?

A. For instance, a contract might have been prepared as signed on the first day of July, and the check might have been given on the 2d day of July, after notifying us they were ready.

Q. Might or might there not be a difference of say two weeks?

A. No, sir, because when we were notified we would go down and pay up and take the contract.

Q. I will ask you to examine such records as you have and state positively to the Special Examiner whether of your own knowledge you can say that those contracts, and each of them, were made on the dates which they purport to bear?

The Witness—I will do so.

RE-DIRECT EXAMINATION.

Mr. Redding—Q. In round numbers, how much has the Pacific Coast Oil Company invested in its plant on these lands and the Government lands adjacent thereto?

A. A part of our system also includes our refining plant at Alameda Point, and our tank car lines; we have invested approximately, one and a-half millions of dollars in our entire business.

Q. What is the amount of dividends that the Pacific Coast Oil Company has paid since its incorporation, in round numbers?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant.)

A. It has paid in the neighborhood of \$100,000 during the present year.

Q. Did it pay any dividends prior thereto?

(Same objection.)

A. No, sir.

(In answer to the question on page 650, which it was agreed that the witness might answer to the Special Examiner, in the absence of counsel, the witness states):

A. I have examined our records, and find that for contract No. 10,077, dated April 21st, 1889, that we made payment to the Southern Pacific Railroad Company by our check on Wells, Fargo & Company's Bank, San Francisco, of the same date. I further find that for contracts Nos. 10,320 to 10,333, inclusive, all of which contracts are dated May 8th, 1890, that we made payment to the Southern Pacific Railroad Company on said contracts by our check on Wells,

Fargo & Company's Bank, San Francisco, dated May 7th, 1890, and that for deed No. 9,416, "Defendants' Exhibit before the Special Examiner, No. 105," that we made payment to the Southern Pacific Railroad Company by our check on Wells, Fargo & Company's Bank, San Francisco, dated March 2d, 1888. I further found upon examination that the money called for by all of these checks had been duly collected by the Southern Pacific Railroad Company, and the cancelled checks returned to us by Wells, Fargo & Company's Bank; this shows that the contracts were executed within from one to three days of the time of their date, and that we actually paid the money in advance of their execution. I am a citizen of the United States.

D. G. SCOFIELD.

Mr. Redding—Defendants offer in evidence, by reference, in the same manner that we offered yesterday, the Postmaster-General's Reports, the report of the Auditor of Railroad Accounts for 1880, officially published, as follows:

"Annual Report of the Auditor of Railroad Accounts, made to the Secretary of the Interior, for the year ending June 30, 1880, Washington, Government Printing Office, 1880," for the purpose of showing the relations between the Southern Pacific Railroad Company and the Government of the United States, with reference to the accounts and reports rendered by the Southern Pacific Railroad Company to the Government of the United States, in accordance with the instructions of Congress given to the Auditor of Railroad Accounts, and I ask that they be referred to by

title only, as it is stipulated that the volume, being an official publication, is before the Court. Is that right, Mr. Call, subject to your objections?

Mr. Call—I have no objections to the mode of their being offered, and it may have the same effect as though the volume referred to was filed in the case as an exhibit.

I object to it upon the following grounds: As incompetent, immaterial and irrelevant, and not the best evidence; and upon the further ground that the lands in suit herein were excepted out of the grant to the Southern Pacific Railroad Company made by the Act of Congress of March 3, 1871, by the terms and conditions of said Act; and upon the further ground that the lands in suit herein were withdrawn for the Atlantic and Pacific Railroad Company, and were reserved before the Southern Pacific Railroad Company filed its map of definite location; and upon the further ground that the matters in issue in this suit have been finally decided and adjudicated by the Supreme Court of the United States, and the United States Circuit Court for Southern District of California, as shown by the records of such decisions in evidence herein; and upon the further ground that the Southern Pacific Railroad Company, to which the grant was made by the Act of Congress of March 3, 1871, by entering into the articles of consolidation and amalgamation, in evidence herein marked Master's Exhibits 1, 2 and 3, and Defendants' Exhibits before the Special Examiner, Nos. 88 and 89, has surrendered to the United States all interest in these lands, and did thereby surrender to

the United States in each case of consolidation, all right to earn such lands by constructing a railroad; and upon the further ground that the mortgage of 1875 to Lloyd Tevis and D. O. Mills, Trustees, shows upon its face that it does not purport to cover lands not granted to the Southern Pacific Railroad Company; and upon the further ground that the records of the Interior Department, and of the United States Land Office at Los Angeles, and the United States Land Office at San Francisco, and the records of the office of the Secretary of State for California, and the public laws of the United States and of California, show that the Southern Pacific Railroad Company, defendant herein, has no interest in these lands.

Mr. Redding—You do not object to the incompetency of the evidence, as not being the best evidence of the facts therein stated, do you?

Mr. Call—I waive my objection to the mode and manner of offering the document, and consent that it may be made by reference with the same effect as if it was now filed before the Special Examiner as an exhibit in the case duly offered, but I do object to it upon the grounds stated.

Mr. Redding—Defendants next offer in evidence the report of the Commissioner of Railroads, for 1881, officially published as follows:

“ Annual Report of the Commissioner of Railroads, made to the Secretary of the Interior for the year ending June 30th, 1881, Washington, Government Printing Office, 1881.”

(Same objection.)

Mr. Redding—Defendants next offer in evidence the report of the Commissioner of Railroads for 1882, officially published as follows:

"Annual Report of the Commissioner of Railroads made to the Secretary of the Interior for the year ending June 30th, 1882, Washington, Government Printing Office, 1882."

(Same objection.)

Mr. Redding—Defendants next offer in evidence the report of the Commissioner of Railroads for 1883, officially published as follows:

"Annual Report of the Commissioner of Railroads made to the Secretary of the Interior for the year ending June 30th, 1883, Washington, Government Printing Office, 1883."

(Same objection.)

Mr. Redding—Defendants next offer in evidence the report of the Commissioner of Railroads for 1884, officially published as follows:

"Annual Report of the Commissioner of Railroads made to the Secretary of the Interior for the year ending June 30th, 1884, Washington, Government Printing Office, 1884."

(Same objection.)

Mr. Redding—Defendants next offer in evidence the report of the Commissioner of Railroads for 1885, officially published as follows:

"Annual Report of the Commissioner of Railroads made to the Secretary of the Interior for the year ending June 30th, 1885, Washington, Government Printing Office, 1885."

(Same objection.)

Mr. Redding—Defendants next offer in evidence the report of the Commissioner of Railroads for 1886, officially published as follows:

“Annual Report of the Commissioner of Railroads made to the Secretary of the Interior for the year ending June 30th, 1886, Washington, Government Printing Office, 1886.”

(Same objection.)

Mr. Redding—Defendants next offer in evidence the report of the Commissioner of Railroads for 1887, officially published, as follows:

“Annual Report of the Commissioner of Railroads made to the Secretary of the Interior for the year ending June 30th, 1887, Washington, Government Printing Office, 1887.”

(Same objection.)

Mr. Redding—Defendants next offer in evidence the report of the Commissioner of Railroads for 1888, officially published, as follows:

“Annual Report of the Commissioner of Railroads made to the Secretary of the Interior for the year ending June 30th, 1888, Washington, Government Printing Office, 1888.”

(Same objection.)

Mr. Redding—Defendants next offer in evidence the report of the Commissioner of Railroads for 1889, officially published, as follows:

“Annual Report of the Commissioner of Railroads made to the Secretary of the Interior for the year ending June 30th, 1889, Washington Government Printing Office, 1889.”

(Same objection.)

Mr. Redding—Defendants next offer in evidence the report of the Commissioner of Railroads for 1890, officially published as follows:

“Annual Report of the Commissioner of Railroads made to the Secretary of the Interior for the year ending June 30th, 1890, Washington, Government Printing Office, 1890.”

(Same objection.)

Mr. Redding—Defendants next offer in evidence the report of the Commissioner of Railroads for 1891, officially published as follows:

“Annual Report of the Commissioner of Railroads made to the Secretary of the Interior for the year ending June 30th, 1891, Washington, Government Printing Office, 1891.”

(Same objection.)

Mr. Redding—Defendants next offer in evidence the report of the Commissioner of Railroads for 1892, officially published as follows:

“Annual Report of the Commissioner of Railroads made to the Secretary of the Interior for the year ending June 30th, 1892, Washington, Government Printing Office, 1892.”

(Same objection.)

Mr. Redding—These are all offered by reference under Mr. Call's stipulation, as official publications from the Government Printing Office, and for the purpose of showing the receipt of the reports of the Southern Pacific Railroad Company sent to the Commissioner of Railroads, and set forth by him in the said annual reports to Congress and to the various officers of the Government.

Mr. Call—All under the same objections.

Testimony of Charles J. Wilder:

Charles J. Wilder, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. Redding—Q. What is your present occupation?

A. I am freight auditor of the Southern Pacific Company.

Q. How long have you occupied that position?

A. Since the company came into existence.

Q. In 1885? A. In 1885; yes, sir.

Q. As auditor of the Southern Pacific Company do you have anything to do with the freight accounts of the Southern Pacific Railroad Company?

A. Only in so far as they are covered by their relations to the Southern Pacific Company.

Q. Do the accounts for freight transported over the line of the Southern Pacific Railroad Company between Mojave by the way of Los Angeles to Fort Yuma, in any way come under your inspection or official action?

A. Yes, sir.

Q. In what way?

A. All the accounts covering freight of any character moved over that line are kept by me—kept in my office.

Q. Has the Southern Pacific Railroad Company, through its lessee, the Southern Pacific Company, any relations with the Government of the United States between the points named with reference to the transportation of governmental effects over the line of the Southern Pacific Railroad Company?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence, and upon the further ground that the lands in suit herein were excepted out of the grant to the Southern Pacific Railroad Company made by the Act of Congress of March 3, 1871, by the terms and conditions of said act; and upon the further ground that the lands in suit herein were withdrawn for the Atlantic and Pacific Railroad Company, and were reserved before the Southern Pacific Railroad Company filed its map of definite location; and upon the further ground that the matters in issue in this suit have been finally decided and adjudicated by the Supreme Court of the United States and the United States Circuit Court for the Southern District of California, as shown by the records of such decisions in evidence herein; and upon the further ground that the Southern Pacific Railroad Company to which the grant was made by the Act of Congress of March 3, 1871, by entering into the articles of consolidation and amalgamation, in evidence herein, marked Master's Exhibits 1, 2 and 3, and Defendants' Exhibits before the Special Examiner, Nos. 88 and 89, has surrendered to the United States all interest in these lands, and did thereby surrender to the United States in each case of consolidation, all right to earn such lands by constructing a railroad, and upon the further ground that the mortgage of 1875, to Lloyd Tevis and D. O. Mills, Trustees, shows upon its face that it does not purport to cover lands not granted to the Southern Pacific Railroad Company; and upon the further ground that the records of the Interior Depart-

ment, and of the United States Land Office at Los Angeles, and the United States Land Office at San Francisco, and the records of the office of the Secretary of State for California, and the public laws of the United States and of California, show that the Southern Pacific Railroad Company, defendant herein, has no interest in these lands.)

A. Yes, sir; such freight is being constantly transported.

Q. What is the method of the Government obtaining transportation of freight—I am now speaking of other than postal service over the line of the Southern Pacific Railroad Company between the points named?

(Same objection.)

A. Freight is presented in exactly the same manner that any freight from a commercial house would be, and is handled and carried through in the same way.

Q. Who presents the freight on behalf of the Government?

(Same objection.)

A. Usually the freight is shipped through the Quartermaster's Department, and their teamsters present the freight at the warehouse.

Q. Do you know as a fact whether the Southern Pacific Railroad Company, between the points named, holds itself all of the time in readiness to transport the freight of the Government, such as munitions of war, soldiers, etc.?

(Same objection.)

A. It does, through its relations with the Southern Pacific.

Q. Does it do this through its lease with the Southern Pacific Company at present?

(Same objection.)

A. Yes, sir.

Q. Will you state in what manner accounts are made up between the Government of the United States on the one side, and the Southern Pacific Railroad Company through its lessee, the Southern Pacific Company, on the other, for Government transportation?

(Same objection.)

A. Accompanying the various shipments of Government freight, is a bill of lading which is an acknowledgment by the Railroad Company that they have received the freight from the shippers, usually the Quartermaster, for transportation to the various points to which it is destined. This bill of lading accompanies the freight through to its destination and is there signed, what is called accomplished, by the consignee, acknowledging that he has received this freight, that the transportation has been performed; these documents are then returned to my office, and I make up an account against the Government in the name of the Southern Pacific Company for the transportation, and present these bills of lading as the evidence of the transportation having been performed.

Q. How are the accounts for such transportation settled as between the Southern Pacific Company and the Government and afterwards between the Southern Pacific Company and the Southern Pacific Railroad Company.

(Same objection.)

A. The account is made in the name of the Southern Pacific Company and presented to the accounting officers of the Government, and is settled the same as any other account would be.

Q. Are the same prices for transportation received by the Southern Pacific Company, as lessee of the Southern Pacific Railroad Company, for transportation of soldiers and governmental effects between the points named, over the Southern Pacific Railroad Company, as are received for a like service performed for individuals?

(Same objection.)

A. Our accounts are all based on those same rates; yes, sir.

Q. Is it not a fact that in the appropriations by Congress a less rate is allowed for governmental transportation for this particular road?

(Same objection.)

A. I know what you mean, but it is hardly in that shape; that only applies to the army appropriation act; there is in the army appropriation act a clause which says that disbursements of money from that fund shall not exceed 50 per cent. of the regular charges; the charge is extended at the same rate, but a portion of that charge is disallowed.

Q. Do you know why that is the case?

(Same objection.)

A. That is one of the conditions in the appropriation act.

Q. Then I understand that the rate made up and charged to the Government is the same rate, so far as your office is concerned, as would be charged to individuals?

(Same objection.)

A. Certainly.

Q. Do you know how much is allowed by the Government for the Southern Pacific Railroad Company through its lessee, the Southern Pacific Company, and between the points named of that rate?

(Same objection.)

A. 50 per cent. of that charge.

Q. Can you produce any settled account between the Government and the Southern Pacific Company as lessee of the Southern Pacific Railroad Company for transportation recently performed between the points named?

(Same objection.)

A. I can show you an account for service performed in the months of September, October and November, 1889, which has been settled, and I can refer you to the date of the settlement, and the warrant which was drawn in settlement (producing).

Q. Is this the original?

(Same objection.)

A. Yes, sir.

Q. I understand you now produce an original statement of account for transportation between the United States and the Southern Pacific Company, Pacific System, No. 5,487, on account of the War Department for the months of September, October and November, 1889, for freight, in the sum of \$4,089.53, covering transportation, which includes the points named, Tehachapi by way of Los Angeles to Fort Yuma?

(Same objection.)

A. Yes, sir.

Mr. Redding—We offer this in evidence as Defendants' Exhibit before the Special Examiner, No. 120, and ask that under the stipulation a copy be made of the same and certified by the Special Examiner, which copy, when so made and certified, shall stand in lieu of the original.

Mr. Call—I have no objections to the Special Examiner making a copy and certifying to the same.

I will object to the introduction of the paper in evidence on the ground that it is incompetent, immaterial and irrelevant, and not the best evidence; and upon the further ground that the lands in suit herein were excepted out of the grant to the Southern Pacific Railroad Company, made by the Act of Congress of March 3, 1871, by the terms and conditions of said Act; and upon the further ground that the lands in suit herein were withdrawn from the Atlantic and Pacific Railroad Company, and were reserved before the Southern Pacific Railroad Company filed its map of definite location; and upon the further ground that the matters in issue in this suit have been finally decided and adjudicated by the Supreme Court of the United States, and the United States Circuit Court for the Southern District of California, as shown by the records of such decisions in evidence herein; and upon the further ground that the Southern Pacific Railroad Company, to which the grant was made by the Act of Congress of March 3, 1871, by entering into the articles of consolidation and amalgamation in evidence herein, marked Master's Exhibits 1, 2 and 3, and Defendants' Exhibits before the Special Examiner, Nos. 88 and 89,

has surrendered to the United States all interest in these lands, and did thereby surrender to the United States in each case of consolidation, all right to earn such lands by constructing a railroad; and upon the further ground that the mortgage of 1875 to Lloyd Tevis and D. O. Mills, Trustees, shows upon its face that it does not purport to cover lands not granted to the Southern Pacific Railroad Company; and upon the further ground that the records of the Interior Department and of the United States Land Office at Los Angeles, and the United States Land Office at San Francisco, and the records of the office of the Secretary of State for California, and the public laws of the United States and of California, show that the Southern Pacific Railroad Company, defendant herein, has no interest in these lands; and the further objection that the Southern Pacific Company mentioned in the account and referred to by the witness is a different corporation from the Southern Pacific Railroad Company, and that the Southern Pacific Company is not a party to this suit.

Mr. Redding—Q. Is this exhibit we have offered the original from which an exact copy was made and forwarded to the War Department?

(Same objection.)

A. Yes, sir.

Q. They were compared under your own supervision?

(Same objection.)

A. Yes, sir.

Q. Is this a form similar to those used for other accounts of like nature with the Government?

(Same objection.)

A. Yes, sir.

Q. For how many years has the Southern Pacific Railroad Company performed transportation for the Government between the points named and under similar procedure as herein testified to?

(Same objection.)

A. Ever since the road has been in operation.

Q. Do you know as a fact whether the line of the Southern Pacific Railroad Company from Mojave by the way of Los Angeles to Fort Yuma has always been maintained as a first-class railroad for governmental transportation?

(Same objection.)

A. So far as I am able to know, not being an expert.

Q. Don't you know as a fact that the road has been used all the time for that purpose?

(Same objection.)

A. Yes, sir.

Q. Have not accounts been audited for freight transported for the Government during these years?

(Same objection.)

A. Yes, sir.

Q. Prior to the 50 per cent. rate, of the change being allowed, what was the percentage allowed?

(Same objection.)

A. The full payment.

Mr. Call—Q. When was it changed to 50 percent.?

A. This last Congress; the previous Congress it was 60.

Q. What was it before that?

A. Full payment.

Mr. Redding—Q. What is your method of crediting to the Southern Pacific Railroad Company its proportion of these governmental transportation charges?

(Same objection.)

A. They are included in our regular earning statements and apportioned the same as all the other traffic is apportioned over that part of the line.

Q. Do you know as a fact whether the Southern Pacific Railroad Company gets its due credit for the governmental transportation between these points?

(Same objection.)

A. Yes, sir.

Q. It does?

(Same objection.)

A. Yes, sir.

Q. Has the Government of the United States recognized the line of the Southern Pacific Railroad Company, between the points named, as one of its means of governmental transportation during all these years?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence; and upon the further ground that the lands in suit herein were excepted out of the grant to the Southern Pacific Railroad Company, made by the Act of Congress of March 3, 1871, by the terms and conditions of said Act; and upon the further ground that the lands in suit herein were withdrawn for the Atlantic and Pacific Railroad Company, and were reserved before the Southern Pacific Railroad Company filed its map of definite location; and upon the further ground that

the matters in issue in this suit have been finally decided and adjudicated by the Supreme Court of the United States, and the United States Circuit Court for the Southern District of California, as shown by the records of such decisions in evidence herein; and upon the further ground that the Southern Pacific Railroad Company, to which the grant was made by the Act of Congress of March 3, 1871, by entering into the articles of consolidation and amalgamation, in evidence herein, marked "Master's Exhibits 1, 2 and 3, and Defendants' Exhibits before the Special Examiner, Nos. 88 and 89," has surrendered to the United States all interest in these lands, and did thereby surrender to the United States in each case of consolidation, all right to earn such lands by constructing a railroad; and upon the further ground that the mortgage of 1875 to Lloyd Tevis and D. O. Mills, Trustees, shows upon its face that it does not purport to cover lands not granted to the Southern Pacific Railroad Company; and upon the further ground that the records of the Interior Department, and of the United States Land Office at Los Angeles, and the United States Land Office at San Francisco, and the records of the office of the Secretary of State of California, and the public laws of the United States and of California, show that the Southern Pacific Railroad Company, defendant herein, has no interest in these lands; and the further objection that the Southern Pacific Company mentioned in the account and referred to by the witness as a different corporation from the Southern Pacific Railroad Company, and that the Southern Pacific Company is not a party to this

suit; and the further objection that the testimony sought calls for a conclusion of law on the part of the witness, and the matter has been fully shown by the previous evidence.

A. Yes, sir.

Q. Have you with you any of the original orders or demands from the Government for governmental transportation over the line of the Southern Pacific Railroad Company?

(Same objection.)

A. Yes, sir, (producing).

Mr. Redding—Defendants offer in evidence transportation order made by the Government of the United States upon the Southern Pacific Company, wherein the demand is made by the Government that the Southern Pacific Company transport Private F. Armstead and pounds of extra baggage of Company C, 10th Regiment Infantry, from San Francisco, California, to Los Angeles, California, by the way of the Southern Pacific Railroad Company, signed by R. N. Batchelder, Quartermaster-General United States army, duly countersigned; and ask that it be marked Defendants' Exhibit before the Special Examiner, No. 121, and that a copy made by the Special Examiner be certified, and when so certified stand in lieu of the original.

Mr. Call—Objected to as incompetent, immaterial and irrelevant, and not the best evidence; and upon the further ground that the lands in suit herein were excepted out of the grant to the Southern Pacific Railroad Company, made by the Act of Congress of March 3, 1871, by the terms and conditions of said

Act, and upon the further ground that the lands in suit herein were withdrawn for the Atlantic and Pacific Railroad Company, and were reserved before the Southern Pacific Railroad Company filed its map of definite location; and upon the further ground that the matters in issue in this suit have been finally decided and adjudicated by the Supreme Court of the United States, and the United States Circuit Court for the Southern District of California, as shown by the records of such decisions in evidence herein; and upon the further ground that the Southern Pacific Railroad Company, to which the grant was made by the Act of Congress of March 3, 1871, by entering into the articles of consolidation and amalgamation, in evidence herein, marked Master's Exhibits 1, 2, and 3, and Defendants' Exhibits before the Special Examiner, Nos. 88 and 89, has surrendered to the United States all interest in these lands, and did thereby surrender to the United States in each case of consolidation, all right to earn such lands by constructing a railroad; and upon the further ground that the mortgage of 1875, to Lloyd Tevis and D. O. Mills, Trustees, shows upon its face that it does not purport to cover lands not granted to the Southern Pacific Railroad Company; and upon the further ground that the records of the Interior Department, and of the United States Land Office at Los Angeles, and the United States Land Office at San Francisco, and the records of the office of the Secretary of State for California, and the public laws of the United States and of California, show that the Southern Pacific Railroad Company, defendant herein, has no interest in these lands.

(Transportation order made by the Government of the United States upon the Southern Pacific Company to transport F. Armstead, is marked Defendants' Exhibit before the Special Examiner, No. 121, Stephen Potter, Special Examiner, and a certified copy thereof is attached hereto.)

Mr. Redding—Defendants next offer in evidence, similar order for transportation upon the Southern Pacific Railroad Company, dated June 30th, 1893, and signed by R. N. Batchelder, Quarter-Master General of the United States Army, and duly countersigned, calling upon the Southern Pacific Railroad Company to transport Sergeant Charles H. Trask, of Troop G, and two privates, Company C, First Regiment Cavalry, en route from Alcatraz Island, California, to Wilcox, Arizona, and ask that it be marked Defendants' Exhibit before the Special Examiner, No. 122, and when a copy is certified by the Special Examiner, that the copy may stand in lieu of the original.

(Same objection.)

(Order for transportation upon the Southern Pacific Railroad Company, dated June 30th, 1893, to transport Sergeant Charles A. Trask, is marked "Defendants' Exhibit before the Special Examiner, No. 122, Stephen Potter, Special Examiner," and a certified copy thereof is attached hereto.)

Mr. Redding—Q. Are these two demands or requests for transportation by the Government recently made, for transportation upon the Southern Pacific Railroad Company and the Southern Pacific Company?

(Same objection.)

A. Yes, sir.

Q. Was the transportation performed by the Southern Pacific Company as lessee of the Southern Pacific Railroad Company, and by the Southern Pacific Railroad Company in conformity with such demand or request by the Government?

(Same objection.)

A. Yes, sir.

Q. Is that the common form of demand made by the Government for transportation over the line of the Southern Pacific Railroad Company between the points named?

(Same objection.)

A. Yes, sir.

Q. Is it honored by that company in each instance?

(Same objection.)

A. Yes, sir.

CROSS-EXAMINATION.

Mr. Call—Q. What proportion of the full amount of the fare was paid upon that transportation request last referred to?

A. It has not been paid yet. It has never been settled.

Q. Has either one of them been settled?

A. No, sir.

Q. What is the deduction which you say is usually made for a land grant road? A. 50 per cent.

Q. What was it in 1891? A. 60 per cent.

Q. What was it in 1890? A. Full payment.

Q. What was it prior to that time?

A. I believe there was a deficiency appropriation that had the same condition of 60 per cent in it which

covered the deficiency of 1890, but the general appropriation was full payment prior to 1891.

Q. Did that cover transportation of troops, munitions of war, public stores and other Government property? A. Do you mean full payment?

Q. Yes, sir. A. Yes, sir.

Q. How long has the railroad been operated by the Southern Pacific Company of Kentucky?

A. Since 1885.

Q. What deductions were made for land grant roads in paying for transportation of mails prior to 1890?

Mr. Redding—We object to the question as not proper cross-examination; I have not asked Mr. Wilder anything in reference to postal service, and I doubt if the witness' testimony would be competent, as not being the best evidence.

A. 20 per cent. reduction.

Mr. Call—Q. How long did that deduction continue previous to 1890?

A. I think it was in the law of 1876.

Q. It was all fixed by law? A. Yes, sir.

Q. Are you an officer of the Southern Pacific Company of Kentucky or of the Southern Pacific Railroad Company? A. Southern Pacific Company.

Q. How are the accounts adjusted between the Southern Pacific Company and the Southern Pacific Railroad Company?

A. The accounts are all kept in the name of the Southern Pacific Company, and then monthly we make a distribution of the earnings for the different roads over which service is performed, including the Southern Pacific Railaoad Company.

Q. And then there is paid by the Southern Pacific Company of Kentucky the amount called for under the lease?

A. Yes, sir.

Q. Has the Government ever made a deduction for transportation of troops and munitions of war and public stores where the service was performed by the Southern Pacific Company of Kentucky, and accounts made by that Company to the Government?

A. No, sir.

Q. Has the Government ever made deduction for transporting of mails where the service was performed by the Southern Pacific Company of Kentucky?

A. The same deduction as if it had been performed by the Southern Pacific Railroad Corporation.

Q. Then a deduction was in fact made where the service was performed by the Southern Pacific Company of Kentucky?

A. Just the same as if it had been performed by the Southern Pacific Railroad Company.

Q. When was the present contract made for carrying mails from Goshen to Yuma by the Southern Pacific Company of Kentucky.

A. The present arrangement, which is hardly in the nature of a contract, went into effect July 1st, 1890; we made no contract so far as having any written agreement; we were obliged to carry the mails; I believe the Act compels that, and the compensation is determined by law, based on the weight of the mails carried, which is determined by weighing once in four years.

Q. What is paid to the Southern Pacific Company for carrying mails from Goshen to Yuma?

A. I cannot tell the figures.

Q. What is the mode of keeping the account with the Government—do you make out an account monthly or otherwise, in reference to the transportation of mails?

A. We make no account; the sum paid is a fixed sum, and the Postoffice Department draw their warrants for the amount quarterly.

Q. And send it?

A. Send it, yes, sir. Of course, we enter up the amounts on our books.

Q. Do you mean to say then that the amount paid now is only half the amount paid to other roads for similar services?

A. Not for mails.

Q. How is it for mails?

A. The amount paid for mail transportation is the same to any other land grant road for mail transportation, that is 80 per cent. of the regular rates.

RE-DIRECT EXAMINATION.

Mr. Redding—Q. Where is Wilcox?

(Same objection.)

A. In Arizona.

Q. How far from San Francisco?

(Same objection.)

A. Say in the neighborhood of 1,000 miles.

Q. The lines of what Companies leased by the Southern Pacific Company are used in the transportation of soldiers and other governmental effects, not postal, between San Francisco and Wilcox.

(Same objection.)

A. The Central Pacific between San Francisco and West Oakland; the Northern Railway between West Oakland and Martinez; the Southern Pacific Railroad Company between Martinez and Tracy; the Central Pacific Railroad Company between Tracy and Goshen; the Southern Pacific Railroad Company between Goshen and Yuma; the Southern Pacific Railroad Company of Arizona from Yuma east to Wilcox.

Q. Then if a Government transportation was made by the Southern Pacific Company from San Francisco to Wilcox, recently, will you please state how the amounts to be paid by the Government would be adjusted over the several lines of leased railroads used?

(Same objection.)

A. The settlement would be made with the Southern Pacific Company for the entire distance, the payment due the land grant portion of the line being reduced according to the law.

Q. What portion of the distance named is the land grant portion of the line?

(Same objection.)

A. I have not the miles in my mind.

Q. Would it include that portion of the line from Mojave by the way of Los Angeles to Fort Yuma?

(Same objection.)

A. Yes, sir.

Q. Will you state whether the Southern Pacific Company would receive from the Government the same rate for the transportation of soldiers between Mojave by the way of Los Angeles and Fort Yuma and between Goshen and Yuma, and between Tracy and Yuma, as it would receive from San Francisco to Tracy?

(Same objection.)

A. The rate used is a through rate, covering the entire distance from San Francisco to Wilcox.

Q. How would that be apportioned afterwards?

(Same objection.)

A. On the basis of the mileage of land grant and non-land grant roads.

Q. Then there would be a difference between the land grant portion of the road and the non-land grant portion of the road?

(Same objection.)

A. In the final settlement there would be a deduction from the land grant portion.

On page 676, line 14, I desire to withdraw my answer "No, sir," and substitute the following answer in lieu thereof: The same deductions have been made as would have been made if settlement had been made with the individual corporations over whose roads the service was performed.

C. J. WILDER.

Mr. Redding—Mr. Call, inasmuch as Judge Lamme, the Standing Master, is present, and has in his custody original exhibits introduced by the Government in this case, which include Exhibit No. 10, which was known in Case 68 as Master's Exhibit 127, I would like to have the Special Examiner compare this exhibit with Defendants' Exhibit before the Special Examiner, No. 54, and certify if one is an exact copy of the other, with the exception of the certificate, so that Exhibit No. 10 can stand exactly the same in all respects as Exhibit 54.

Mr. Call—I think that the exhibits will show for themselves what they are, and I am not prepared to make any stipulation in reference to it, because Exhibit 54, which you have offered, contains a certificate which I consider to be fraudulent in stating it to be a map which it really is not, and I wish that to stand as it is.

Mr. Redding—Then I will have to take Mr. Hood's testimony and have it apply to the Exhibit No. 10, which the Standing Master has brought here, unless you will agree that his testimony does apply to that exhibit. I am not referring now to the certificate at all, but simply to the tracings and the map itself. Do you desire me to recall Mr. Hood?

Mr. Call—You can use your own judgment in regard to that, and take such testimony on that as you see fit.

Mr. Redding—Then I understand you will not agree that Mr. Hood's testimony shall apply without his further statement to that effect to Exhibit No. 10?

Mr. Call—I should prefer to have the witness testify under oath in reference to it, without any admission on my part that Exhibit No. 54 has any relevancy in this case, or could be considered by the Court.

Mr. Redding—Then I will request Judge Lamme to be present before the Special Examiner on Friday of this week, at 10:30 a. m., at this place, with the exhibits heretofore introduced by the Government, and now in his custody, so that the testimony of Mr. Hood may be applied thereto.

Judge Lamme—I will be here on Friday.

(A recess was then taken by consent until 3 p. m.)

San Francisco, October 4th, 1893, 3 p. m.

Mr. Redding—Mr. Call, upon examination of Defendants' Exhibits before the Special Examiner, Nos. 98, 99, 100, 101, being contracts of purchase between the Southern Pacific Railroad Company and E. H. Forester, and as to 101, contract between the Southern Pacific Railroad Company and D. G. Scofield, we find on further examination of the land described in said contracts, that the same is not included in this suit, the land lying outside of the limits sued upon by the United States in this Case, 184; therefore, I ask leave to withdraw these exhibits from the record, and that they may be marked as taken out by consent, as not being contracts with reference to any lands in controversy. Is that satisfactory?

Mr. Call—That is satisfactory, with the understanding that the photograph, which is a photograph of the lands described in the contracts, is also withdrawn.

Mr. Redding—if that photograph refers to land in these contracts, which have been withdrawn, I consent that that also shall be withdrawn from the record.

(Defendants' Exhibits before the Special Examiner, Nos. 98, 99, 100 and 101, are marked by the Special Examiner as withdrawn from the record by the consent of counsel; and it is agreed between counsel that the offers of same appearing upon the record heretofore may be stricken therefrom by the Special Examiner drawing a line through the same.)

(An adjournment was then taken by consent until Thursday, October 5th, 1893, at 10:30 a. m.)

San Francisco, Thursday, October 5th, 1893.

Mr. Call—Mr. Redding, regarding the understanding that some contracts referred to, and offered in evidence in the taking of the testimony of witness Scofield, it was understood that the exhibits referred to were to be withdrawn, because the lands therein described are not involved in this suit, and I consented to that upon condition that the photograph marked "Defendants' Exhibit before the Special Examiner, No. 102," should also be withdrawn, as it referred to land likewise not involved in suit. I wish to have an understanding as to whether that photograph is withdrawn or otherwise.

Mr. Redding—if it is a fact that the photograph refers to lands not involved in this suit, my understanding is that it is withdrawn.

Mr. Call—I wish to say that until that is determined, the exhibits referred to must be left with the Special Examiner, or not withdrawn, in order that it can be ascertained whether or not the photograph does refer to lands involved in suit, or otherwise.

Mr. Redding—that is satisfactory.

Mr. Call—The testimony in regard to the photograph, and the testimony in regard to the lands not involved in the suit must also be withdrawn, if anything is withdrawn.

Mr. Call—Mr. Redding, I want to give notice, as before stated, on the day we took the testimony of Mr. Scofield, that I wished to recall him to ask him some questions that were inadvertently omitted. Before his testimony is sealed and signed and completed, I would

like to have the privilege of recalling him for that purpose.

Mr. Redding—When Mr. Scofield comes to sign his testimony before the Special Examiner you should certainly be given an opportunity, and I hereby consent that an opportunity be given you to cross-examine him further at that time. He is at present in the southern part of the State.

Mr. Redding—Defendants offer in evidence the official map of Township No. 5 North, Range 11 West, San Bernardino Base and Meridian, showing the survey of portions of the township named, examined, approved, and filed in the office of the Surveyor-General, San Francisco, California, March 19, 1856, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 123;" and that a certified copy of the original may be substituted in lieu of the same when certified by the Surveyor-General. Mr. Call, have you any objection for me to substitute a certified copy of the original in lieu of the original certified by the Surveyor-General?

Mr. Call—I think that I should require whatever is offered to remain in the case in reference to this matter. If you wish to certify copies you can do so, and I will make such objections as I see fit.

Mr. Redding—Heretofore we have agreed that certified copies of any documents may be made which shall stand in lieu of the original.

Mr. Call—I have doubts about either the originals or copies from this office being competent evidence, and for that reason I would not feel inclined to make any stipulation in reference to it.

Mr. Call—I object to the introduction of the paper referred to as incompetent, immaterial and irrelevant, and not the best evidence; and upon the further ground that the lands in suit herein were excepted out of the grant of the Southern Pacific Railroad Company made by the Act of Congress of March 3, 1871, by the terms and conditions of said Act; and upon the further ground that the lands in suit herein were withdrawn for the Atlantic and Pacific Railroad Company, and were reserved before the Southern Pacific Railroad Company filed its map of definite location; and upon the further ground that the matters in issue in this suit have been finally decided and adjudicated by the Supreme Court of the United States, and the United States Circuit Court for the Southern District of California, as shown by the records of such decisions in evidence herein; and upon the further ground that the Southern Pacific Railroad Company, to which the grant was made by the Act of Congress of March 3, 1871, by entering into the Articles of Consolidation and Amalgamation in evidence herein, marked Master's Exhibits 1, 2 and 3, and Defendants' Exhibits before the Special Examiner, Nos. 88 and 89, has surrendered to the United States all interest in these lands, and did thereby surrender to the United States in each case of consolidation all right to earn such lands by constructing a railroad; and upon the further ground that the mortgage of 1875 to Lloyd Tevis and D. O. Mills, trustees, shows upon its face that it does not purport to cover lands not granted to the Southern Pacific Railroad Company; and upon the further ground

that the records of the Interior Department, and of the United States Land Office at Los Angeles, and the United States Land Office at San Francisco, and the records of the office of the Secretary of State for California, and the public laws of the United States and of California, show that the Southern Pacific Railroad Company, defendant herein, has no interest in these lands; and upon the further ground that it does not appear that the alleged survey referred to has ever been approved by the Commissioner of the General Land Office; and upon the further ground that it does not purport to show a survey of any lands through which the Atlantic & Pacific Railroad Company located its line of route; and upon the further ground that it does not appear that the alleged plat of survey has ever been filed in the United States Land Office, in the district where such lands are situated.

(Certified copy of the original map of Township 5 North, Range 11 West, of San Bernardino Meridian on file in the office of the Surveyor-General for California, is marked "Defendants' Exhibit before the Special Examiner, No. 123, Stephen Potter, Special Examiner," and the same is attached hereto, in pursuance of the subsequent consent of Mr. Call, found in this record at page , in the following words: "I have no objections to a certified copy being made of Exhibit 123, to be offered in lieu of the original, and subject to the same objections.")

Mr. Redding—Defendants next offer in evidence certified copy of the original map of like title on file in the office of the United States Surveyor-General, for the State of California, showing the survey of

Township 5 North, Range 12 West, San Bernardino Base and Meridian, certified by John C. Hays, Surveyor-General for California, on July 25th, 1856, to the effect that the above map of Township 5 North, Range 12 West, San Bernardino Base and Meridian, is strictly conformable to the field notes of the survey thereof on file in this office, which have been examined and approved, dated July 25th, 1856; and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 124."

Mr. Call—Is it understood that by entering the words "same objection" that it shall include the full objection previously entered, without necessity for repeating it?

Mr. Redding—Yes, sir.

(Objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence; and upon the further ground that the lands in suit herein were excepted out of the grant to the Southern Pacific Railroad Company, made by the Act of Congress of March 3, 1871, by the terms and conditions of said Act; and upon the further ground that the lands in suit herein were withdrawn for the Atlantic & Pacific Railroad Company, and were reserved before the Southern Pacific Railroad Company filed its map of definite location; and upon the further ground that the matters in issue in this suit have been finally decided and adjudicated by the Supreme Court of the United States, and the United States Circuit Court for the Southern District of California, as shown by the records of such decisions in evidence herein; and upon the further ground that the Southern Pacific

Railroad Company, to which the grant was made by the Act of Congress of March 3, 1871, by entering into the articles of consolidation and amalgamation in evidence herein, marked Master's Exhibits 1, 2 and 3, and Defendants' Exhibit before the Special Examiner, Nos. 88 and 89, has surrendered to the United States all interest in these lands, and did thereby surrender to the United States in each case of consolidation all right to earn such lands by constructing a railroad; and upon the further ground that the mortgage of 1875 to Lloyd Tevis and D. O. Mills, Trustees, shows upon its face that it does not purport to cover lands not granted to the Southern Pacific Railroad Company; and upon the further ground that the records of the Interior Department and of the United States Land Office at Los Angeles, and the United States Land Office at San Francisco, and the records of the office of the Secretary of State for California, and the public laws of the United States and of California, show that the Southern Pacific Railroad Company, defendant herein, has no interest in these lands; and upon the further ground that it does not appear that the alleged survey referred to has ever been approved by the Commissioner of the General Land Office; and upon the further ground that it does not purport to show a survey of any lands through which the Atlantic and Pacific Railroad Company located its line of route; and upon the further ground that it does not appear that the alleged plat of survey has ever been filed in the United States Land Office in the district where such lands are situated, and upon the further ground that the copy of the alleged map offered is not an

original map, and does not purport to be an original, nor a copy of an original map of a survey made at the time the Atlantic and Pacific Railroad Company located its line of route upon the ground or filed its map or plat thereof in the Interior Department; and upon the further ground that the alleged map offered is not authenticated under the seal of the General Land Office and signature of the Commissioner of the General Land Office.

(Certified copy of the original map of Township No. 5 North, Range No. 12 West, of the San Bernardino Meridian, on file in the office of the Surveyor-General, San Francisco, California, is marked "Defendants' Exhibit before the Special Examiner, No. 124, Stephen Potter, Special Examiner," and is annexed hereto.)

Mr. Redding—Defendants next offer in evidence certified copy, certified by the United States Surveyor-General for California, of the original map of like title on file in this office, namely, the office of the United States Surveyor-General for California, showing the survey of Township 4 North, Range 13 West, San Bernardino Base and Meridian, under the surveys made in 1855 and 1856, with the certificate by John C. Hays, Surveyor-General for California, dated July 25th, 1856, certifying that the map of Township 4 North, Range 13 West, San Bernardino Base and Meridian, is strictly conformable to the field notes of the survey thereof on file in this office, which have been examined and approved, Surveyor-General's office, San Francisco, California, July 25th, 1856, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 125."

(Same objection.) .

(Certified copy of original map of Township 4 North, Range 13 West, of the San Bernardino Meridian, on file in the office of the Surveyor-General for California, is marked "Defendants' Exhibit before the Special Examiner, No. 125, Stephen Potter, Special Examiner," and is attached hereto.)

Mr. Redding—Defendants next offer in evidence certified copy, certified by the United States Surveyor-General for California, of the original map showing the survey of Township 4 North, Range 14 West, San Bernardino Base and Meridian, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 126."

(Certified copy of original map of Township No. 4 North, Range 14 West, San Bernardino Meridian, on file in the office of the Surveyor-General for California, is marked "Defendants' Exhibit before the Special Examiner, No. 126, Stephen Potter, Special Examiner," and is attached hereto.)

Mr. Redding—Defendants next offer in evidence certified copy, certified by the United States Surveyor-General for California, of the original map on file in his office, showing the survey of Township 4 North, Range 15 West, San Bernardino Base and Meridian, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 127."

(Same objection.)

(Certified copy of original map of Township No. 4 North, Range No. 15 West, San Bernardino Meridian, on file in the office of the Surveyor-General for California, is marked "Defendants' Exhibit before the

Special Examiner, No. 127, Stephen Potter, Special Examiner," and is attached hereto.)

Mr. Redding—Defendants next offer in evidence certified copy, certified by the United States Surveyor-General for California, of the original map on file in his office, showing the survey of Township 4 North, Range 16 West, San Bernardino Base and Meridian, and ask that the same be marked "Defendants' Exhibit before the Special Examiner, No. 128."

(Same objection.)

(Certified copy of original map of Township No. 4 North, Range No. 16 West, San Bernardino Meridian, on file in the office of the Surveyor-General for California, is marked "Defendants' Exhibit before the Special Examiner No. 128, Stephen Potter, Special Examiner," and is attached hereto.)

Testimony of William H. Pratt:

William H. Pratt, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. Redding—Q. I show you Defendants' Exhibit before the Special Examiner, No. 124, and ask you if that is your signature attached to the certificate therein which reads: "I hereby certify this to be a full, true and correct copy of the original map of like title on file in this office, Surveyor-General's Office, San Francisco, California, October 4th, 1893. William H. Pratt, United States Surveyor-General, California."

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence; and upon the further ground that the lands in suit herein were excepted out of the grant to the Southern Pacific Railroad Company made by the Act of Congress of March 3, 1871, by the terms and conditions of said Act; and upon the further ground that the lands in suit herein were withdrawn for the Atlantic and Pacific Railroad Company, and were reserved before the Southern Pacific Railroad Company filed its map of definite location; and upon the further ground that the matters in issue in this suit have been finally decided and adjudicated by the Supreme Court of the United States, and the United States Circuit Court for the Southern District of California, as shown by the records of such decisions in evidence herein; and upon the further ground that the Southern Pacific Railroad Company, to which the grant was made by the Act of Congress of March 3, 1871, by entering into the articles of consolidation and amalgamation, in evidence herein, marked Master's Exhibits 1, 2 and 3, Defendants' Exhibits before the Special Examiner, Nos. 88 and 89, has surrendered to the United States all interest in these lands, and did thereby surrender to the United States in each case of consolidation all right to earn such lands by constructing a railroad; and upon the further ground that the mortgage of 1875 to Lloyd Tevis and D. O. Mills, Trustees, shows upon its face that it does not purport to cover lands not granted to the Southern Pacific Railroad Company; and upon the further ground that the records of the Interior Department,

and of the United States Land Office at Los Angeles, and the United States Land Office at San Francisco, and the records of the office of the Secretary of State for California, and the public laws of the United States and of California, show that the Southern Pacific Railroad Company, defendant herein, has no interest in these lands; and upon the further ground that it does not appear that the alleged survey referred has ever been approved by the Commissioner of the General Land Office; and upon the further ground that it does not purport to show a survey of any lands through which the Atlantic & Pacific Railroad Company located its line of route; and upon the further ground that it does not appear that the alleged plat of survey has ever been filed in the United States Land Office in the district where such lands are situated; and upon the further ground that the copy of alleged map offered is not an original map, and does not purport to be an original map, nor a copy of an original map of a survey made at the time the Atlantic & Pacific Railroad Company located its line of route upon the ground or filed its map or plat thereof in the Interior Department; and upon the further ground that the alleged map offered is not authenticated under the seal of the General Land Office, and signature of the Commissioner of the General Land Office.)

A. Yes, sir; that is my signature.

Q. Is that the seal of your office?

(Same objection.)

A. It is.

Q. Is that certificate correct?

(Same objection.)

A. It is.

Q. Will you please look at Defendants' Exhibit before the Special Examiner, No. 125, wherein the following certificate appears: "I hereby certify this to be a full, true and correct copy of the original map of like title on file in this office, Surveyor-General's Office, San Francisco, California, October 4th, 1893. William H. Pratt, United States Surveyor-General, California." Is that your signature?

(Same objection.)

A. It is.

Q. Is that the seal of your office?

(Same objection.)

A. It is.

Q. Is that certificate correct?

(Same objection.)

A. It is.

Q. I ask you to look at Defendants' Exhibit before the Special Examiner, No. 126, wherein the following certificate appears: "I hereby certify this to be a full, true and correct copy of the original map of like title on file in this office, Surveyor-General's Office, San Francisco, California, October 4th, 1893. William H. Pratt, United States Surveyor-General, California." Is that your signature?

(Same objection.)

A. It is.

Q. Is that the seal of this office?

(Same objection.)

A. It is.

Q. Is that certificate correct?

(Same objection.)

A. It is.

Q. And you so certified it yourself?

(Same objection.)

A. Yes, sir.

Q. I ask you to look at Defendants' Exhibit before the Special Examiner, No. 127, where appears the following certificate: "I hereby certify this to be a full, true and correct copy of the original map of like title, on file in this office, Surveyor-General's Office, San Francisco, California, October 4th, 1893. William H. Pratt, United States Surveyor-General, California." Is that your signature?

(Same objection.)

A. It is.

Q. Is that the seal of your office?

(Same objection.)

A. It is.

Q. Is the certificate correct?

(Same objection.)

A. It is.

Q. I will ask you to look at Defendants' Exhibit before the Special Examiner, No. 128, where there appears the following certificate: "I hereby certify this to be a full, true and correct copy of the original map of like title on file in this office, Surveyor-General's Office, San Francisco, California, October 4th, 1893. William H. Pratt, United States Surveyor-General for California." Is that your signature?

(Same objection.)

A. Yes, sir.

Q. Is that the seal of this office attached?

(Same objection.)

A. Yes, sir.

Q. Is that certificate the truth?

(Same objection.)

A. It is.

Mr. Redding—Defendants offer in evidence certified copy, certified by the United States Surveyor-General for California, of the original map on file in his office, showing the survey of Township 4 North, Range 17 West, San Bernardino Base and Meridian, and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 129."

(Same objection.)

(Certified copy of original map of Township No. 4 North, Range No. 17 West, San Bernardino Meridian, on file in the office of the Surveyor-General for California, is marked "Defendant's Exhibit before the Special Examiner, No. 129, Stephen Potter, Special Examiner," and is attached hereto.)

Mr. Redding—Q. I ask you to look at Defendants' Exhibit before the Special Examiner, No. 129, upon which appears the following certificate: "I hereby certify this to be a full, true and correct copy of the original map of like title on file in this office, Surveyor-General's office, San Francisco, California, October 4th, 1893. William H. Pratt, United States Surveyor-General for California." Is that your signature?

(Same objection.)

A. It is.

Q. Is that the seal of your office?

(Same objection.)

A. It is.

Q. Is the certificate true and correct?

(Same objection.)

A. It is.

CROSS-EXAMINATION.

Mr. Call—Q. Referring to your certificate upon Exhibit 129, and your statement that the certificate there was correct, I notice from the map that it appears to have been made up from a large number of surveys run at different times; can you state when the original map was made in your office upon which surveys the map was made?

A. These notations describe it as far as can be stated; of course, I was not here when those surveys were made, and I can tell only from the records, and this at the bottom indicates when these surveys were made, and it is the only means that I would have of knowing when they were made.

Q. The map purports to show when the surveys were made; now, can you state from any of the records of your office whether a map was made, for instance, upon the surveys of 1853 and 1858?

A. This map was made undoubtedly in 1880.

Q. That is the original from which this is a certified copy?

A. And this is the only map of these surveys shown on it, as appears from the record.

Q. Then there was no map made previous to 1880?

A. Not of this township, but there would be a map of part of the east boundary of the township, probably made in 1854, and that would be only a short line there.

Q. How long a distance?

A. I should suppose about one mile; hardly a mile.

Q. How about the rest of the map, when was any map made of any of the balance of it?

A. This line that I have spoken of as the east boundary of the township would appear in the map of the survey of 4 North, 16 West, it would be the west boundary of that township, that is, that much of it.

Q. About a mile?

A. Yes, sir, about that, apparently.

Q. And you think that that is the only map, then, that was made prior to 1880?

A. The only map of the subdivisions of this township; there appear to be some township lines that were surveyed in 1879.

Q. Suppose we take the date of December 30th, 1872, what would the records of your office show as to whether there was a map on file in your office at that time of this township, and if so, what would it show?

(Question objected to by Mr. Redding as not the best evidence and incompetent.)

A. I could give no testimony in the matter, except what appears from the map.

Q. I did not suppose that you would know from your personal recollection, but from the records of your office, and would expect you to refresh your recollection and to examine whatever was necessary to examine, in order to testify understandingly in regard to that?

(Same objection.)

A. That is as to the condition of this land prior to that time, whether it was surveyed or unsurveyed.

Q. On the 30th of December, 1872, what was the condition of that township as shown by any of the maps in this office?

(Same objection.)

A. I should say it was unsurveyed, all of that township, except lot No. 37, which was a private grant.

Q. What do you mean by a private grant?

(Question objected to by Mr. Redding on the ground that it is immaterial, irrelevant and incompetent; irrelevant from the fact that the alleged surveyed line of the Atlantic & Pacific Railroad Company through this township, as shown upon the maps filed by the complainant in this case, namely, Master's Exhibit No. 10, exhibit the public surveys as existing in 1871, upon these lands, and because said maps show the township lines and range lines as run thereon and existing, and the alleged survey line of the Atlantic & Pacific is certified by the chief engineer to have been made through this territory in reference to the public surveys, and therefore the question is immaterial and irrelevant; also upon the further ground that it is incompetent, and not the best evidence.)

A. It was known as a Spanish grant.

Q. Was there any record in your office of any map, as appears from the records of your office now, on the 30th day of December, 1872, showing any survey in this township other than the distance of about a mile on the east boundary referred to?

(Same objection.)

A. I should say not.

Q. Was there any map showing that survey of about a mile on the east boundary on say, December 30th, 1872?

(Same objection.)

A. I should say not.

Q. Referring to the map of Township 4 North, 16 West, marked Exhibit 128, was there any record in your office on the 1st day of May, 1872, showing any survey in Township 4 North, Range 16 West?

(Same objection.)

A. From the records, as far as I understand them, there were no subdivisions of the public lands in that township made at that time; prior to that time a part of the east boundary of the township had been surveyed in 1855.

Q. How much of it.

(Same objection.)

A. About a mile and a quarter.

Q. Was there any map of it in this office on May 1st, 1872?

(Same objection.)

A. I presume there was.

Q. Can you ascertain whether there was or not by an examination of your records?

(Same objection.)

A. I can.

Mr. Call—I will request you to have an examination made, to see what map there was in your office, showing any survey in that township on May 1st, 1872?

(Same objection.)

(A recess was then taken by consent until two p.m.)

San Francisco, October 5th, 1893, 2 P.M.

CROSS-EXAMINATION OF WILLIAM H. PRATT.
(Resumed.)

The Witness—I have made an examination of the records of the office, and I find what we call a map of exteriors of the townships in question, that is, 4 North, 16 West, and 4 North, 15 West, which shows the surveys made as indicated on the official maps, or these certified copies, and showing all the surveys that were made prior to 1872.

Q. Can you state from any of the records or files of your office, whether this map which you are now speaking of as showing certain exterior lines, was extant in 1872, and prior thereto, as to when it was made?

(Same objection.)

A. It is certified to by the Surveyor-General, John C. Hays, as having been approved on the 19th of March, 1856.

Q. The map was approved, you say, at that time?

(Same objection.)

A. Yes, sir; and the field notes of the survey shown by this map are also on file in the office.

Q. Can you state from any of the records of your office whether that map, or any map of that township, 4 North, 16 West, was transmitted to the United States Land Office for the district where the land is situated prior to 1872?

(Same objection.)

A. No, I could not.

Q. Is there anything among the records and files of your office to show that a map of that township

was transmitted to the United States District Land Office prior to 1872?

(Same objection.)

A. No, sir; not that I know of.

Q. This map that you refer to, does that show a survey of any lands, the one that was made prior to 1872?

Mr. Redding—I object to the counsel speaking of a map and asking the witness to testify about it, which is not in evidence; and I object to and move to strike from the record any evidence in reference to a map now before the witness which is not before the Court, or introduced before the Master, because the testimony of an official plat is wholly irrelevant without the plat being presented before the Court.

Q. What map are you speaking of?

Mr. Call—I am referring to the map the witness speaks about.

Mr. Redding—What is that map?

Mr. Call—What did he state it to be?

The Witness—I called it a map of the exterior lines of certain townships.

Mr. Call—Q. I will ask you that question: Does it purport to be a map showing a survey of any lands?

Mr. Redding—I object to the question as immaterial, irrelevant and incompetent, and on the same ground as mentioned in my former objection.

The Witness—I would like to add to my answer regarding this map, that it is a map of the surveys made by Henry Hancock, United States Deputy Surveyor, made under a contract dated February 15th, 1855, and this map is the notes of that survey; of course, it re-

fers to some exteriors and to offsets, and through various townships.

Mr. Call—Q. Does it purport to be a map showing a survey of any lands?

Mr. Redding—I make the same objections, and I call for the map to be introduced in evidence before its contents are spoken about, and unless it is done I move the Court to exclude the witness' testimony on this point.

Mr. Call—I would like to have an answer from the witness without being obstructed. I do not like the manner of making objections, and would like to have an answer to the question, to the best of the knowledge of the witness.

(Same objection.)

A. It is not a map of the subdivisions of any township.

Mr. Call—Q. Does the map show the subdivisions of any section?

(Same objections, and the further objection that the map speaks for itself, if at all, and is the best evidence, and the testimony of the witness is not competent.

A. It does not.

Q. Can you produce before the Special Examiner any map from your office of any of the townships delineated upon that plat, being 5 North, 12 West, 4 North, 12 West, 4 North, 13 West, 4 North, 14 West, 4 North, 15 West, and 4 North 16 West, showing a plat of surveys made within those townships, or any of them, which was extant in your office as early as the 1st day of January, 1872?

(Same objection, and the further objection, that the plat which he has been speaking about shows surveys

anterior to that time, and which up to the present time the Government, although questioning the witness concerning the same, has not introduced.)

A. 4 North, 13 West, was surveyed prior to that time.

Q. What portion of 4 North, 13 West?

(Same objection.)

A. As shown by this map, Exhibit 125, 4 North, 13 West, is shown on that exhibit to be prior to that date.

Q. Were there any lands surveyed or sections subdivided in any of the other townships prior to that date?

(Same objection.)

A. There is 5 North, 12 West, on Exhibit 124.

Mr. Redding—Mr. Call, I will ask you whether you intend on behalf of the Government to introduce a copy of this map of surveyed exteriors of 1856, through these townships?

Mr. Call—I may do so.

Mr. Redding—Will you state whether you intend to do so at the present time, or not?

Mr. Call—I cannot state at the present time whether I will or not.

Mr. Redding—Then I again move to exclude all the witness' testimony pertaining to said map.

Mr. Redding—Q. Will you have a certified copy of the original Exhibit 123 made in lieu of the original?

A. I will.

Mr. Redding—I herewith give notice that I will substitute a certified copy of Exhibit 123 in lieu of the original already offered, as soon as the same is certified by the Surveyor-General.

Mr. Call—Q. Referring to Township 4 North, Range 13 West, was there any plat showing surveys of lands in that township in your office on the 1st day of January, 1872, or prior thereto?

(Same objection.)

A. The map was approved by the Surveyor-General July 25th, 1886, and it is customary always to forward them soon after to the land office in the district where the lands are situated; and I do not know as it was sent.

Q. Is there anything in your office to show that a copy of it was sent to the United States District Land Office?

(Same objection.)

A. Not that I have been able to find.

Q. Referring to Township 5 North, Range 12 West, will you state whether there is any record or memorandum in your office showing whether a copy of any map of that township was transmitted to the United States District Land Office as early as January 1st, 1872, or at any time prior thereto?

(Same objection.)

A. I have not been able to find a record of any of the maps that were approved as far back as that time. I have not been able to find in this office any record of any map as having been received by the Register of the Land Office.

Q. I understood you to say that there were no records in your office, or evidence to show whether any plats of any of the townships referred to had been transmitted to the United States District Land Office?

(Same objection.)

A. Only two townships; Township 5 North, 12 West, Exhibit 124, and—

Q. (interrupting) Was a copy of that transmitted to the United States District Land Office?

(Same objection.)

A. There is evidence that they were all transmitted except these two.

Q. What is that evidence?

(Same objection.)

A. The receipt of the Register.

Q. I was referring to transmitting them to the United States Land Office in the district prior to 1872?

(Same objection.)

A. There are only two, there is no evidence of those two, 5 North, 12 West, Exhibit 124, and 4 North, 13 West, Exhibit 125; as to the others there is evidence.

Q. As to the others, there is evidence of their being transmitted?

(Same objection.)

A. Yes, sir; prior to a certain time in the office here there was no record kept here of those things, and some time since that time a complete record has been kept of all that were sent to the Register of the Land Office, but prior to that time there was none.

Q. Where is there any evidence of any copy of any survey being sent to the United States Land Office within the district where the land lay prior to 1872?

(Same objection.)

A. There is none in regard to any of the townships in question.

Q. Then there is no evidence that they have been sent?

(Same objection.)

A. No, sir.

Q. What evidence is there that a copy of any survey of that township was sent to the land office of the district prior to 1872?

(Same objection.)

A. There is no evidence whatever that I know of in the office.

Q. Then is it not true that there is no evidence that copies of any of them were sent prior to 1872?

(Same objection.)

A. The others were not made prior to that time, so they could not have been sent.

Q. Then there is no evidence that any of them were sent?

(Same objection.)

A. Prior to 1872.

Q. Referring to Township 4 North, 13 West, Exhibit 125, state whether the south line of that township was surveyed in 1872?

(Same objection, and the further objection that it is immaterial and irrelevant on the ground that the township shows that the northeast corner and northeast quarter of the township were surveyed in that time sufficiently to give the entire dimensions and distances of public surveys surrounding that locality.)

A. I should say not, judging from the map.

Q. State what, if any, portion of the west boundaries of that township was surveyed prior to 1872?

(Same objection.)

A. There were 19 chains and 50-100 links surveyed.

Q. Was any other part of that line surveyed prior to 1872?

(Same objection.)

A. It is not shown on the map to have been surveyed; I could not say without looking at the original with regard to that.

Q. I will ask you, then, to look at the original, and state whether there was any survey prior to 1872 of the west line of that township, other than what you have stated, as appears from the records of your office?

(Same objection.)

A.—(After examination.) There was not.

Q. Referring to Township 4 North, Range 14 West, state whether, as appears from the records of your office, there was any township plat of that township extant in your office prior to 1872?

(Same objection.)

A. I think not.

Q. Can you discover from any of the records of your office any evidence that there was any plat of that township in your office prior to 1872?

(Same objection.)

A. I think not.

Q. Had any section lines in that township been run prior to 1872?

(Same objection, and the further objection that it is not the best evidence.)

A. So far as I know there was not.

Q. Any sections subdivided.

(Same objection.)

A. I think not.

Q. Any township corners marked?

(Same objection.)

A. I have no means of knowing only by reference to the map, and from that I should think not.

Q. Referring to Township 4 North, Range 13 West, state whether there is any evidence in your office that the northwest, southwest, or southeast corners of that township were located prior to 1872?

(Same objection.)

A. I have no means of knowing only from the map, and from that I should say that they were not.

Q. Referring to Township 4 North, 15 West, please state whether, from the records of your office, either of the corners of that township were located and surveyed prior to 1872?

(Same objection.)

A. I think not.

Q. It appears from the records of your office that they were not?

(Same objection.)

A. So far as I understand them.

Q. State whether any sections in that township were subdivided prior to 1872?

(Same objection.)

A. I do not know of any evidence that there was in the office.

Q. Does it appear that there were or were not?

(Same objection.)

A. It appears that there were not.

Q. Was a copy of the map of that township, or any map of that township, transmitted to the local district land office prior to 1872?

(Same objection.)

A. No, sir.

Q. Referring to Township 4 North, Range 16 West, please state whether there is any evidence in your office showing that either of the township corners of that township were surveyed or located prior to 1872?

(Same objection.)

A. No, there is not.

Q. State whether any sections in that township were subdivided prior to 1872?

(Same objection.)

A. No, sir.

Q. Referring to Township 4 North, Range 17 West, state whether, from the records of your office, it appears that either of the township corners of that township were surveyed and located prior to 1872?

(Same objection.)

A. No, it does not.

Q. State whether any sections were subdivided in that township prior to 1872?

(Same objection.)

A. No, there were not.

Q. State whether the north, south or west lines of that township had been surveyed or run prior to 1872?

(Same objection.)

A. No, sir.

Q. State whether there is any map of that township on file in your office prior to the first day of January, 1872?

(Same objection.)

A. No, sir; there is not.

Q. When was the first map made?

(Same objection.)

A. In 1880.

Q. What map did you have in your office, if any, showing surveys through the several townships in the Santa Clara River and Soledad Canyon prior to 1872?

(Same objection.)

A. A map marked No. 2, which is a map from the surveys executed by Henry Hancock, United States Deputy Surveyor, under contract dated February 15th, 1855, approved March 19th, 1856, by John C. Hays, Surveyor-General for California.

Q. Does that map show subdivisions of any of the sections?

(Same objection, and the further objection to what the map shows if it is not offered in evidence.)

A. I could not say; it possibly does, but I would have to examine the matter a little.

Mr. Call—Please examine it and see.

Mr. Redding—The defendants object to the method of examining the witness with reference to this map, not having offered the map in evidence. The witness is called upon to give his opinion as to what things are on a map, and as to what those things indicate that are on a map, showing surveys made through the Soledad Pass in 1856, without offering the original or certified copy of the original map itself in evidence, thus getting into evidence opinions of the witness with reference to a map which is not before the Court; and I ask that the witness' testimony be excluded on this point, unless the Government introduces the map itself, and then questions the witness upon the exhibit introduced.

A. To the best of my knowledge there was not, judging from the records of the office, so far as I understand them.

Mr. Call—Q. Is there any evidence in your office to show that any copy of this map was transmitted to the United States Land Office in the district where the land is situated, referring to Map No. 2 of Hancock's survey of the exterior boundaries and traverse lines of the Hancock survey.

Mr. Redding—Is that map in evidence yet?

Mr. Call—I have not offered it yet.

Mr. Redding—Then I object to any questions pertaining to it, because the Court is not informed of what you are talking about, and cannot know what the examination relates to unless the exhibit is offered. I am perfectly willing a certified copy of this map be made by you, and be considered as offered now instead of introducing the original at this moment; but the question must be made intelligible to the Court by having something before the Court in the shape of a map. I make the same objections also to the question as heretofore stated.

A. There is not, as far as I am aware of.

RE-DIRECT EXAMINATION.

Mr. Redding—Q. Have you anything in the records of the United States Land Office for the District of California, showing the survey of the territory, or any portion of the territory, in Township 5 North, Range 9 West, Township 5 North, Range 10 West, Township 5 North, Range 11 West, Township 5 North, Range 12 West, thence through

the Soledad Pass, and thence through Township 4 North, Range 15 West, and Township 4 North, Range 16 West, in the year 1855 or 1856, under an official contract, or by an officer of the United States Surveyor's office?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence; and upon the further ground that the lands in suit herein were excepted out of the grant to the Southern Pacific Railroad Company made by the Act of Congress of March 3, 1871, by the terms and conditions of said act; and upon the further ground that the lands in suit herein were withdrawn for the Atlantic and Pacific Railroad Company, and were reserved before the Southern Pacific Railroad Company filed its map of definite location; and upon the further ground that the matters in issue in this suit have been finally decided and adjudicated by the Supreme Court of the United States and United States Circuit Court for the Southern District of California, as shown by the records of such decisions in evidence herein; and upon the further ground that the Southern Pacific Railroad Company, to which the grant was made by the Act of Congress of March 3d, 1871, by entering into the Articles of Consolidation and Amalgamation in evidence herein, marked Master's Exhibits 1, 2 and 3, and Defendants' Exhibits before the Special Examiner, Nos. 88 and 89, has surrendered to the United States all interest in these lands, and did thereby surrender to the United States in each case of consolidation all right to earn such lands by constructing a railroad; and upon the further ground that the

mortgage of 1875 to Lloyd Tevis and D. O. Mills, Trustees, shows upon its face that it does not purport to cover lands not granted to the Southern Pacific Railroad Company; and upon the further ground that the records of the Interior Department, and of the United States Land Office at Los Angeles, and the United States Land Office at San Francisco, and the records of the office of the Secretary of State for California, and the public laws of the United States and of California, show that the Southern Pacific Railroad Company, defendant herein, has no interests in those lands.)

A. Yes, sir.

Q. What is that record that you have—is it this map you have been speaking of?

(Same objection.)

A. Yes, sir.

Q. How is that map certified?

(Same objection.)

A. It is certified as a plat of surveys made by H. Hancock, Deputy Surveyor, under his contract, dated February 15th, 1855, the field notes whereof have been returned to this office and examined and approved, Surveyor-General's Office, San Francisco, California, March 19th, 1856. Signed John C. Hayes, Surveyor-General, California.

Q. Does this map also contain a traverse of the Soledad Pass, showing courses, chains and triangulations from standard lines and township lines?

(Same objection.)

A. Yes, sir.

Q. Referring to Township 5 North, Range 9 West, upon this map, do you find there the western boun-

dary of that township, and the southern boundary, and the southwest corner of that township, as surveyed officially in 1856?

(Same objection.)

A. It appears to show that.

Q. Does it also show section lines, or indication of section lines, marked off from those township lines to a certain extent?

(Same objection.)

A. It does; at the same time I should judge from the map that they were not surveyed, except possibly the corners of the sections were located on these township lines, which would be shown by the notes.

Q. Upon this map, and turning to Township 5 North, Range 11 West, you will please state what the method of surveying is from a point in Section 18 on the western line of Section 18, Township 5 North, Range 11 West, San Bernardino Base and Meridian, as shown upon this United States survey of 1856, from that point westerly and southerly through the Soledad Pass?

(Same objection.)

A. It was running traverse lines.

Q. What do you mean by traverse lines?

(Same objection.)

A. I mean a line returned from one point in such a direction as would answer the purpose of the surveyor to run through a difficult place diagonally, or as it might be necessary, in order to reach some open point in another township.

Q. Was that result obtained on this map by going into Township 4 North, Range 15 West, on the eastern edge of Section 13?

(Same objection.)

A. Yes, sir, I should judge that was the object.

Q. Does the traverse of Soledad Pass, as written out on this map, with the angles, triangulations and courses, show that this was done?

(Same objection.)

A. Yes, sir.

Q. Can you have a certified copy of this map prepared and certified by yourself to be a correct copy of the map that you are now speaking from?

(Same objection.)

A. I can.

Q. Will you please do so, so that it will be ready some time tomorrow?

(Same objection.)

A. I do not know; I will if it is possible.

Q. I understood you to say that you also have in your office the original field notes of Henry Hancock, made by him when he made this survey?

(Same objection.)

A. Yes, sir.

Q. Can you produce them?

(Same objection.)

A. Yes, sir.

Q. Will you make a certified copy, or have made a certified copy of those portions of the Hancock field notes which pertain to his surveys in Township 5 North, Range 9 West, Township 5 North, Range 10 West, Township 5 North, Range 11 West, Township 5 North, Range 12 West, Township 4 North, Range 12 West, Township 4 North, Range 13 West, Township 4 North, Range 14 West, Township 4 North, Range 15

West, Township 4 North, Range 16 West, San Bernardino Meridian?

(Same objection.)

A. Yes, sir; I will.

Q. Referring to Defendants' Exhibit before the Special Examiner, No. 124, and a blue line marked thereon, commencing on the boundary line between Sections 12 and 13 of Township 5 North, Range 12 West, then going into Section 14, and Section 22, and Section 28, and Section 33, and Section 32, and Section 31, will you please state what that blue line is with reference to the surveys?

(Same objection.)

A. It is the traverse line run by Deputy Henry Hancock in 1855, as described on the map that has just been referred to.

Q. Does that blue line appear on the Exhibit 124 in the same relative position on the earth's surface as it does in the exhibit that you have been speaking from, known in your office as No. 2, and which you will furnish us a certified copy of?

(Same objection.)

A. Yes, sir; it is supposed to be the same.

Q. The Government counsel has asked you, on several of these exhibits, whether or not you have found that the corners of townships you have surveyed prior to 1872, and whether certain portions of each township existed in 1872, as surveyed; will you state whether or not it is a fact that in all of these exhibits mentioned by the Government counsel, namely, Exhibits 124, 125, 126, 127, 128 and 129, there are or are not evidences that certain portions of each one of those townships were surveyed before 1872?

Mr. Call—What do you mean by portions of the townships—do you mean portions of exterior lines, or other lines, or inside lines, extended lines?

Mr. Redding—I want the witness to state whether there are any portions of all those townships shown as being surveyed prior to 1872. I suppose any line of a township is a portion of it, whether it is exterior or interior?

(Same objection.)

A. There were part of the exteriors of all of them surveyed.

Q. Prior to 1872?

(Same objection.)

A. Yes, sir.

Q. And is it not a fact that the portions of the exteriors of all these townships are shown to be surveyed on the records of your office as far back as 1856?

(Same objection.)

A. Yes, sir.

Mr. Call—I will state that I have no objections to a certified copy being made of Exhibit 123, to be offered in lieu of the original, and subject to the same objection.

Mr. Redding—Defendants next offer in evidence plat of survey made by H. Hancock, Deputy Surveyor, under his contract dated February 15th, 1855, and approved by the Surveyor-General, John C. Hays, March 19th, 1856, this map being the one that the witness General Pratt has been speaking of as No. 2, or the Hancock survey through the Soledad Canyon, of 1856; and ask that it be marked "Defendants' Exhibit before the Special Examiner, No. 130," with the

understanding that a certified copy of the same may be marked as the exhibit in lieu of the original here offered.

Mr. Call—I have no objection to a certified copy being made, to be offered in lieu of the original, and marked as the exhibit, subject to the objections above made.

(Certified copy of Map No. 2, designated as plat of surveys made by H. Hancock, Deputy Surveyor, under his contract dated February 15th, 1855, on file in the office of the Surveyor-General for California, is marked "Defendants' Exhibit before the Special Examiner, No. 130," and is attached hereto.)

Mr. Redding—Defendants next offer in evidence the field notes of Henry Hancock in reference to his surveys in 1855, in Township 5 North, 9 West, 5 North, 10 West, 5 North, 11 West, 5 North, 12 West, 4 North, 12 West, 4 North, 13 West, 4 North, 14 West, 4 North, 15 West, 4 North, 16 West and 4 North, 17 West, San Bernardino Base and Meridian, and ask that the field notes be marked "Defendants' Exhibit before the Special Examiner, No. 131," with the understanding that a certified copy of the field notes may be made in lieu of the original field notes, which are the official documents of this office. Is that satisfactory?

Mr. Call—So far as the certified copy is concerned it is satisfactory, but I object to the statement as to what the field notes are, as to what the map is, but I understand what you are offering here, and I have no objections to a certified copy being made and marked an exhibit in lieu of the original, and subject to the same objections which I have made.

(An adjournment was taken by consent of counsel until Friday, October 6th, 1893, at 10:30 a. m.)

TESTIMONY OF WILLIAM H. PRATT.

(Recalled for Defendants.)

(This portion of the testimony of William H. Pratt was taken on October 7th, but is placed at this point in the record for convenience of reference.)

DIRECT EXAMINATION.

Mr. Redding—Q. Have you had made a certified copy of the survey of 1856 through the Soledad Canyon in Township 5 North, Range 9 West, Township 5 North, Range 10 West, Township 5 North, Range 11 West, and so forth, known as Map No. 2 in your office, of the surveys of Henry Hancock, 1855?

A. Yes, sir.

Mr. Redding—This is a certified copy of the map offered in evidence on the last hearing here when the Surveyor General was on the stand, and in pursuance to the stipulation entered into at that time, I ask that you mark this "Defendants' Exhibit before the Special Examiner, No. 130."

(The certified copy is marked "Defendants' Exhibit before the Special Examiner, No. 130, Stephen Potter, Special Examiner," and substituted in lieu of the original.)

Mr. Call—Now, that this is offered, I will make the objection to the evidence, and to the question, that the evidence is incompetent, immaterial and irrelevant, and not the best evidence; and upon the further ground that the lands in suit herein were excepted out of the grant to the Southern Pacific Railroad Company, by the terms and conditions of the Act of Congress of March

3, 1871, and by the terms and conditions of the Act of Congress of July 27, 1866; and upon the further ground that the lands in suit herein were withdrawn for the Atlantic & Pacific Railroad Company, and were reserved before the Southern Pacific Railroad Company filed its map of definite location in the Interior Department; and upon the further ground that the matters in issue in this suit have been finally decided and adjudicated by the Supreme Court of the United States, and by the United States Circuit Court for the Southern District of California, as shown by the records of such decisions in evidence herein; and upon the further ground that the Southern Pacific Railroad Company, to which a grant was made by the Act of Congress of March 3, 1871, by entering into the articles of consolidation and amalgamation in evidence herein, marked "Master's Exhibits 1, 2 and 3, and Defendants' Exhibits before the Special Examiner, Nos, 88 and 89," has surrendered to the United States all interest in these lands, and surrendered to the United States in each such case of consolidation all right to earn such lands by constructing a railroad, and all franchises granted by said acts; and upon the further ground that the Southern Pacific Railroad Company, by its lease to the Southern Pacific Company of Kentucky, in evidence herein, marked "Exhibit before the Special Examiner, "M," has put it beyond its power to comply with any of the terms and conditions of the Acts of Congress of March 3, 1871, or July 17, 1866; and upon the further ground that the map of definite location of the Atlantic & Pacific Railroad Company from Springfield, Missouri, by way of the Colorado River to the Pacific Ocean has been judi-

cially determined to be a good and sufficient map of definite location by the Secretary of the Interior, acting in his discretion, and having exclusive cognizance of such matter; and upon the further ground, that it does not appear that this map of pretended survey has been approved by the Commissioner of the General Land Office; and upon the further ground, that it does not appear that this map, or any copy thereof, was on file in the United States Land Office within the district where the lands in controversy are situated, at the time the Atlantic & Pacific Railroad Company surveyed its route through the Soledad Canyon and Santa Clara Valley.

Mr. Redding—Mr. Examiner, Mr. Call requested me to produce the letter from Washington to me, transmitting Exhibit 35, and by turning to my files in my office I have found the original letter from Henry Beard, our attorney in Washington, which is as follows:

“Washington, D. C., April 20th, 1891.

“Joseph D. Redding, Esq.,

“Chronicle Building, San Francisco,

“Dear Sir:—

“I forwarded to your address by express today four
“maps of location of route of the Atlantic &
“Pacific Railroad in California, two filed March 9th,
“1872, and two August 15th, 1872 (April 16th, 1874),
“also certified copy of withdrawal instructions of 21st
“April, 1871, for the Southern Pacific Railroad Com-
“pany to R. & R., Los Angeles—& certified copy of
“our Southern Pacific branch line map filed April 3d,
“1871. You may need these maps to show that the

" location and the withdrawal were made, and the
" time when they were made. Mr. Madden was fur-
" nished with same several months since, and also
" with the land office withdrawal map or diagram
" based upon this map, which diagram will show the
" distance of land from withdrawal the twenty and
" thirty mile limits. I think these copies with those
" already in hand will supply you with all the proof
" you may want either in 178 or 184.

" Very respectfully yours,

" HENRY BEARD."

I do not want to introduce this original letter, and I ask that the reading of it into the record be sufficient, or a certified copy of the original letter made by the Special Examiner.

Mr. Call—The reading of it into the record may stand in lieu of the letter itself.

Mr. Redding—Q. Will you please state whether from the files of your office and the official records you discover any Spanish grants in Township 4 North, Range 29 West, San Bernardino Base and Meridian?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence, and upon the further ground that the lands in suit herein were excepted out of the grant to the Southern Pacific Railroad Company, by the terms and conditions of the Act of Congress of March 3, 1871, and by the terms and conditions of the Act of Congress of July 27, 1866; and upon the further ground that the lands in suit herein were withdrawn for the Atlantic and Pacific Railroad Company, and were reserved

before the Southern Pacific Railroad Company filed its map of definite location in the Interior Department; and upon the further ground that the matters in issue in this suit have been finally decided and adjudicated by the Supreme Court of the United States, and by the United States Circuit Court for the Southern District of California, as shown by the records of such decisions in evidence herein; and upon the further ground that the Southern Pacific Railroad Company, to which a grant was made by the Act of Congress of March 3, 1871, by entering into the articles of consolidation and amalgamation, in evidence herein, marked Master's Exhibits 1, 2 and 3, and Defendants' Exhibits before the Special Examiner, Nos. 88 and 89, has surrendered to the United States all interest in these lands, and surrendered to the United States in each such case of consolidation, all right to earn such lands by constructing a railroad, and all franchises granted by said Acts; and upon the further ground that the Southern Pacific Railroad Company, by its lease to the Southern Pacific Company of Kentucky, in evidence herein, marked "Exhibit before the Special Examiner, M," has put it beyond its power to comply with any of the terms and conditions of the Acts of Congress of March 3, 1871, or July 17, 1866; and upon the further ground that the map of definite location of the Atlantic & Pacific Railroad Company from Springfield, Missouri, by way of the Colorado River to the Pacific Ocean, has been judicially determined to be a good and sufficient map of definite location by the Secretary of the Interior, acting in his discretion, and having exclusive cognizance of such

matter; and upon the further ground that it does not appear that this map of pretended survey has been approved by the Commissioner of the General Land Office; and upon the further ground that it does not appear that this map, or any copy thereof, was on file in the United States Land Office within the district where the lands in controversy are situated, at the time the Atlantic & Pacific Railroad Company surveyed its route through the Soledad Canyon and Santa Clara Valley; and upon the further ground that it does not appear that any of the lands upon the line of the Atlantic & Pacific Railroad, as surveyed and located upon the ground, were surveyed by the Government, or any plat thereof on file in the United States Land Office or in the office of the United States Surveyor-General at the time when said Atlantic & Pacific Railroad Company surveyed and located its route in the Santa Clara Valley and Soledad Canyon and other points mentioned; and upon the further ground that the map of definite location of the Atlantic & Pacific Railroad in the township mentioned does not purport to give the exact distance of such line from any township corner which has been located and surveyed.)

A. It appears to be all Spanish grant.

Q. What have you before you?

(Same objection.)

A. Map of Township 4 North, Range 29 West, San Bernardino Base and Meridian; I said all—I should say all, but 120 acres in the northeast corner of the township.

Mr. Call—I will ask if the same understanding exists with reference to repeating the same objection?

Mr. Redding—I am perfectly agreeable to that, only if you have any other additions to the objection they will stand when made by you subsequently to subsequent questions, but they will not revert back to the former questions or the former objections.

Mr. Call—But the words “same objection” shall be deemed to cover the preceding objection as made?

Mr. Redding—Q. What is the name of the Spanish grant in Township 4 North, Range 29 West?

(Same objection.)

A. Rancho Dos Pueblos.

Q. Will you please inspect the official records of your office of Township 4 North, Range 28 West, San Bernardino Base and Meridian, and state whether you find that said township contains any Spanish grants?

(Same objection.)

A. Yes, sir; it appears to be very largely covered with Spanish grants.

Q. State the names of the Spanish grants?

(Same objection.)

A. There is part of Rancho Dos Peublos, the Rancho La Goleta, a part of the pueblo lands of Santa Barbara, and part of the Rancho Las Positasy La Calera.

Q. Will you turn to the official plat of your office and state whether you find any Spanish grants in Township 4 North, Range 27 West, San Bernardino Base and Meridian?

(Same objection.)

A. Yes, sir; it is partly covered by Spanish grants.

Q. What are their names?

(Same objection.)

A. Las Positasy La Calera and part of the pueblo lands of Santa Barbara.

Q. Will you please state whether, from the official records of your office, you find any Spanish grants or pueblos in Township 4 North, Range 26 West, San Bernardino Base and Meridian?

(Same objection.)

A. There is one; part of the pueblo lands of Santa Barbara.

Q. Is it in the southern part or northern part of the township?

(Same objection.)

A. It is in the southern part.

Q. Will you state, from the official records and plats of your office, whether there are any Spanish grants in the southern part of Township 4 North, Range 25 West, San Bernardino Base and Meridian?

(Same objection.)

A. Yes, sir.

Q. What are they?

(Same objection.)

A. Part of the pueblo lands at Santa Barbara and part of the Rancho El Rincon.

Q. Will you state from the official records and plats of your office, whether in Township 4 North, Range 24 West, San Bernardino Base and Meridian you find any Spanish grants?

(Same objection.)

A. There is one part of the Santa Anna and one part of the El Rincon.

Q. Are those in the southern portion of the township?

(Same objection.)

A. Yes, sir.

Q. Will you state upon investigating the public plats and records of your office and the surveys in reference to Township 4 North, Range 23 West, San Bernardino Base and Meridian, whether you discover any Spanish grants?

(Same objection.)

A. Yes, sir; I find there is part of the Rancho Santa Anna, part of the Rancho Ojai, and part of the lands of the Ex-Mission San Buenaventura.

Q. What is the aggregate area of public lands surveyed?

(Same objection.)

A. In the Township, 1,305 27-100 acres.

Q. What is the estimated area of private grants?

(Same objection.)

A. 20,427 acres.

Q. What is the estimated area of unsurveyed mountain land?

(Same objection.)

A. 1307 73-100 acres.

Q. Will you please state whether from the official records in your office, and plats and surveys, with reference to Township 3 North, Range 24 West, you find that said township contains any Spanish grants?

(Same objection.)

A. Yes, sir; there is part of the Rancho Santa Anna, and part of the Rancho Canada de San Miguelito.

Q. Will you state whether upon investigating the official plats and surveys of your office, showing Township No. 3 North, Range 23 West, San Bernardino Base and Meridian, you find that said township contains any Spanish grants?

(Same objection.)

A. There is part of the Rancho Santa Anna, part of the Rancho Canada San Miguelito, part of the lands of the Ex-Mission San Buenaventura, part of the Rancho Canada Largo Verde, and part of the Ex-Mission of San Buenaventura.

Mr. Call—I move to exclude the testimony of William H. Pratt, regarding Township 4 North, Range 29 West, Township 4 North, Range 28 West, Township 4 North, Range 27 West, Township 4 North, Range 26 West, Township 4 North, Range 25 West, Township 4 North, Range 24 West, Township 4 North, Range 23 West, Township 3 North, Range 24 West, as incompetent, immaterial and irrelevant, and not the best evidence; and upon the further ground that the lands in suit herein were excepted out of the grant to the Southern Pacific Railroad Company by the terms and conditions of the Act of Congress of March 3, 1871, and by the terms and conditions of the Act of Congress of July 27, 1866; and upon the further ground that the lands in suit herein were withdrawn for the Atlantic & Pacific Railroad Company, and were reserved, before the Southern Pacific Railroad Company filed its map of definite location in the Interior Department; and upon the further grouud that the matters in issue in this suit have been finally decided and adjudicated by the Supreme Court of the United States, and by the United States Circuit Court for the Southern District of California, as shown by the records of such decisions in evidence herein; and upon the further ground that the Southern Pacific Railroad Company, to which a grant was made by the

Act of Congress of March 3, 1871, by entering into the Articles of Consolidation and Amalgamation, in evidence herein, marked Master's Exhibits 1, 2, and 3, and Defendants' Exhibits before the Special Examiner, Nos. 88 and 89, has surrendered to the United States all interest in these lands, and surrendered to the United States in each such case of consolidation all right to earn such lands by constructing a railroad, and all franchises granted by said Acts; and upon the further ground that the Southern Pacific Railroad Company, by its lease to the Southern Pacific Company of Kentucky, in evidence herein, marked "Exhibit before the Special Examiner, M," has put it beyond its power to comply with any of the terms and conditions of the Acts of Congress of March 3, 1871, or July 17, 1866; and upon the further ground that the map of definite location of the Atlantic & Pacific Railroad Company from Springfield, Missouri, by way of the Colorado River to the Pacific Ocean, has been judicially determined to be a good and sufficient map of definite location by the Secretary of the Interior, acting in his discretion, and having exclusive cognizance of such matter; and upon the further ground that it does not appear that this map of pretended survey has been approved by the Commissioner of the General Land Office; and upon the further ground that it does not appear that this map or any copy thereof was on file in the United States Land Office within the District where the lands in controversy are situated, at the time the Atlantic & Pacific Railroad Company surveyed its route through the Soledad Canyon and Santa Clara

Valley; and upon the further ground that it does not appear that any of the lands upon the line of the Atlantic & Pacific Railroad, as surveyed and located upon the ground, were surveyed by the Government, or any plat thereof on file in the United States Land Office, or in the office of the United States Surveyor-General at the time when said Atlantic & Pacific Railroad Company surveyed and located its route in the Santa Clara Valley and Soledad Canyon, and other points mentioned; and upon the further ground that the map of definite location of the Atlantic & Pacific Railroad in the township mentioned does not purport to give the exact distance of such line from any township corner which has been located and surveyed; and upon the further ground that said townships are not upon the line of the Atlantic & Pacific Railroad as definitely located between Springfield, Missouri, and the Pacific Ocean, but are situated north of San Buenaventura, between San Francisco and said town of San Buenaventura, between which points the withdrawal of lands for the benefit of the Atlantic & Pacific Railroad Company was revoked and annulled by the Secretary of the Interior in the year 1886.

Mr. Redding—Q. In reference to Township 3 North, Range 23 West, what is the aggregate area of public lands surveyed in 1885, as appears from the official records of your office in said township?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence; and upon the further ground that the lands in suit herein were excepted out of the grant to the Southern Pacific Railroad Company by the terms and conditions

of the Act of Congress of March 3, 1871, and by the terms and conditions of the Act of Congress of July 27, 1866; and upon the further ground that the lands in suit herein were withdrawn for the Atlantic & Pacific Railroad Company, and were reserved before the Southern Pacific Railroad Company filed its map of definite location in the Interior Department; and upon the further ground that the matters in issue in this suit have been finally decided and adjudicated by the Supreme Court of the United States, and by the United States Circuit Court for the Southern District of California, as shown by the records of such decisions in evidence herein; and upon the further ground that the Southern Pacific Railroad Company, to which a grant was made by the Act of Congress of March 3, 1871, by entering into the Articles of Consolidation and Amalgamation in evidence herein, marked Master's Exhibits 1, 2 and 3, and Defendants' Exhibits before the Special Examiner, Nos. 88 and 89, has surrendered to the United States all interest in these lands, and surrendered to the United States in each such case of consolidation all right to earn such lands by constructing a railroad, and all franchises granted by said acts; and upon the further ground that the Southern Pacific Railroad Company, by its lease to the Southern Pacific Company of Kentucky, in evidence herein, marked "Defendants' Exhibit before the Special Examiner, M," has put it beyond its power to comply with any of the terms and conditions of the Acts of Congress of March 3, 1871, or July 17, 1866; and upon the further ground that the map of definite location of the Atlantic and Pacific Railroad Company

from Springfield, Missouri, by way of the Colorado River to the Pacific Ocean, has been judicially determined to be a good and sufficient map of definite location by the Secretary of the Interior, acting in his discretion, and having exclusive cognizance of such matter; and upon the further ground that it does not appear that this map of pretended survey has been approved by the Commissioner of the General Land Office; and upon the further ground that it does not appear that this map or any copy thereof was on file in the United States Land Office within the district where the lands in controversy are situated, at the time the Atlantic & Pacific Railroad Company surveyed its route through the Soledad Canyon and Santa Clara Valley; and upon the further ground that it does not appear that any of the lands upon the line of the Atlantic & Pacific Railroad, as surveyed and located upon the ground, were surveyed by the Government, or any plat thereof on file in the United States Land Office, or in the office of the United States Surveyor-General at the time when said Atlantic & Pacific Railroad Company surveyed and located its route in the Santa Clara Valley and Soledad Canyon, and other points mentioned; and upon the further ground that the map of definite location of the Atlantic & Pacific Railroad in the township mentioned does not purport to give the exact distance of such line from any township corner which has been located and surveyed.

A. 2,239 5-100 acres.

Q. What is the area of private grants?
(Same objection.)

A. 20,793 95-100 acres.

Q. Will you please state whether, upon investigating the surveys and official records and plats of your office of Township 3 North, Range 22 West, San Bernardino Base and Meridian, you find any evidences of Spanish grants occupying said township?

(Same objection.)

A. Yes, sir, there is part of the Canada Larga or Canada Larga Verde, also lands of ex-Mission San Buenaventura, and part of the Rancho Santa Paula y Saticoy.

Q. What is the aggregate area of public lands surveyed in 1885 in this township from the official records of your office?

(Same objection.)

A. 1632 24-100 acres.

Q. What is the area of private grants in this township?

(Same objection.)

A. 21,407 76-100 acres.

Q. Will you please state whether, upon investigation of the public records, plats and surveys of your office of Township 3 North, Range 21 West, San Bernardino Base and Meridian, you find that the township is taken up by private grants, and not by public lands?

(Same objection).

A. Yes, sir, there are part of the lands of the Ex-Mission of San Buenaventura, part of Rancho Santa Paula y Saticoy, and part of Rancho Las Posas.

Q. What is the area of public lands surveyed in this township in 1879, as evidenced by your public records?

(Same objection.)

A. 8,845 89-100 acres.

Q. What is the estimate of private grants?

(Same objection.)

A. 13,951 52-100 acres.

Q. Will you please state whether, from investigation of the records, township plats and surveys of Township 4 North, Range 20 West, S. B. M., you find that said township is taken up to any extent by Spanish grants, private grants?

(Same objection.)

A. Yes, sir; there is part of the Sespe Rancho.

Q. Will you state whether you find from investigation of the township plats and official records and surveys of your office of Township 4 North, Range 19 West, any Spanish grants in said township?

(Same objection.)

A. There is part of the Sespe Rancho.

Q. Will you state from an investigation of the township plats, official records and surveys of your office, of Township 4 North, Range 18 West, S. B. M., you discover that the said township contains any Spanish or private grants?

(Same objection.)

A. Yes, sir; there is part of the Rancho Temescal and part of the Rancho San Francisco.

Q. Will you please state whether from investigation of the official township plats, records and surveys of your office of Township 4 North, 17 West, you find that said township contains Spanish grants?

(Same objection.)

A. Yes, sir; it contains part of the Rancho San Francisco.

Q. What is the area of public land in that township?

(Same objection.)

A. 8,926 71-100 acres.

Q. What is the estimated area of the private grants?

(Same objection.)

A. 13,973 64-100 acres.

Q. Will you please state whether, from an investigation of the official plats, records and surveys of your office of Township No. 4 North, Range 16 West, San Bernardino Base and Meridian, you discover that that township contains Spanish grants, or private grants, and not public lands?

(Same objection.)

A. Yes, sir; it contains a part of the Rancho San Francisco.

Q. What is the aggregate area of public land in that township?

(Same objection.)

A. 2,053 2-100 acres.

Q. What is the estimated area of private grants?

(Same objection.)

A. 20,857 38-100 acres.

Q. In what year?

(Same objection.)

A. The township map of the survey was approved March 26, 1877.

CROSS-EXAMINATION.

Mr. Call—Q. What is the last map you referred to there?

A. 4 North, 16 West, San Bernardino Base and Meridian.

Q. What is it you referred to in answer the questions asked by counsel for defendant?

A. The township map of Township 4 North, Range 16 West, San Bernardino Meridian.

Q. Approved and filed when?

A. It was approved March 26, 1877; filing is another matter.

Q. That is the time the map was made?

A. That is the time it was approved, yes, sir.

Q. When was the map approved of Township 4 North, 17 West, referred to by you?

(Question objected to by Mr. Redding on the ground that the Government alleges in this action that the location of the Atlantic and Pacific Railroad Company through this township was made with reference to the public surveys as they existed at the time the maps were filed, and the exhibits offered by the Government, purporting to be the alleged survey of the route of the Atlantic and Pacific Railroad Company through this township, as shown upon Exhibits Nos. 9, 10, 53, 54, and 57, bear the certificates of the chief engineer of the Atlantic and Pacific Railroad Company, wherein he states under oath that the line of route of the Atlantic and Pacific Railroad Company through this township, and as indicated upon said maps, show the lines of the public surveys in connection with the surveyed line of the route; and, furthermore, upon the ground that Exhibit No. 10, of the complainant in this action, and the other exhibits showing the purported and pretended surveyed line of route of the

Atlantic and Pacific Railroad Company in the State of California, have marked upon their face as of the date filed, namely, in 1872, the townships and ranges of the State of California throughout this territory, and allege that the survey was made with reference to the same, and that they existed at the time of said survey.

A. July 17th, 1880.

Q. When was the plat of Township 4 North, Range 18 West, approved, to which you referred upon your direct examination?

(Same objection, and the further objection that the pretended survey of the Atlantic & Pacific Railroad Company as shown upon its maps filed by the Government in this case in Exhibits No. 10, and the other exhibits, do not purport to show that the same was made by reference to the topography of the country or the elevations, or the characteristics thereof, and the affidavit of the engineer attached to said maps is particular to draw the distinction between a survey made with reference to the natural objects and topography of the country and a survey of a railroad line made in connection with the public surveys on the line of said road.)

A. July 17th, 1880.

Q. When was the plat of Township 4 North, Range 19 West, approved, to which you referred on direct examination?

(Same objection.)

A. July 17th, 1880.

Q. When was the plat of Township 4 North, Range 20 West, approved, to which you referred on direct examination?

(Same objection.)

A. September 24th, 1880.

Q. When was the plat of Township 3 North, Range 21 West, approved, to which you referred on direct examination?

(Same objection.)

A. June 26th, 1879.

Q. When was the plat of Township 3 North, Range 22 West, approved, to which you referred on direct examination?

(Same objection.)

A. June 3d, 1885.

Q. When was the plat of Township 3 North, Range 23 West, approved, to which you referred?

(Same objection.)

A. June 3d, 1885.

Q. When was the plat of Township 3 North, Range 20 West, approved, to which you referred?

(Same objection.)

A. November 24th, 1874.

Q. When was the plat of Township 3 North, Range 24 West, approved, to which you referred?

(Same objection.)

A. November 9th, 1871.

Q. When was the plat of Township 4 North, Range 23 West, approved, to which you referred?

(Same objection.)

A. June 26th, 1878.

Q. When was the plat of 4 North, Range 24 West, approved, to which you referred?

(Same objection.)

A. November 9th, 1875.

Q. When was the plat of Township 4 North, Range 25 West, approved, to which you referred?

(Same objection.)

A. November 9th, 1875.

Q. When was the plat of Township 4 North, Range 26 West, approved, to which you referred?

(Same objection.)

A. May 19th, 1875.

Q. When was the plat of Township 4 North, Range 27 West, approved, to which you referred?

(Same objection.)

A. May 19th, 1875.

Q. When was the plat of Township 4 North, Range 28 West, approved, to which you referred?

(Same objection.)

A. May 26th, 1875.

Q. When was the plat of Township 4 North, Range 29 West, approved, to which you referred?

(Same objection.)

A. February 21st, 1871.

Q. In referring to the dates of the surveys, or approval of the township plats which you have now referred to, state whether those plats represent the only plats in your office of those townships, or are there earlier plats?

(Same objection.)

A. There are earlier plats of some of them.

Q. Referring to plats in your office of Townships 3 North, 23 West, 3 North, 22 West, 3 North, 21 West, 4 North, 20 West, 4 North, 19 West, 4 North, 18 West, and 4 North, 17 West, state what township plats of those townships,

or any of them, were on file in your office on the 1st day of January, 1872?

(Same objection.)

A. There are four of these that there is an earlier map of than there is here; of the others there were none filed.

RE-DIRECT EXAMINATION.

Mr. Redding—Q. Do you know which they are?

A. Yes, sir.

Q. Which are they?

A. There was an earlier map of 3 North, 21 West, 4 North, 20 West, 4 North, 19 West, 4 North, 18 West, and there were none of the others.

(Witness produces before the Special Examiner plats of Townships 4 North, 18 West, 4 North, 19 West, 4 North, 20 West, and 3 North, 21 West.)

Mr. Call—I will offer these maps in evidence, with the understanding that the Surveyor-General may substitute certified copies, which copies shall be marked by the Special Examiner as Exhibits before the Special Examiner, N, O, P and Q.

Mr. Redding—We make the same objections to the evidence, but agree that certified copies may stand in lieu of the originals.

Mr. Redding—It is agreed that the signature of Surveyor-General William H. Pratt, a witness called for the defendants, to his testimony, be waived, and that his testimony shall stand in this case, to have the same effect as if signed by him. Is that agreeable?

Mr. Call—That is agreeable.

Mr. Redding—General Pratt, have you had a certified copy made of the field notes of the surveys of

Henry Hancock in the townships referred to, as requested?

The Witness—Yes, sir, and I now produce it.

(Certified copy of the field notes of Henry Hancock in reference to his surveys in 1855, in Township 5 North, 9 West, 5 North, 10 West, 5 North, 11 West, 5 North, 12 West, 4 North, 12 West, 4 North, 13 West, 4 North, 14 West, 4 North, 15 West, 4 North 16 West, and 4 North, 17 West, San Bernardino Base and Meridian, is Marked "Defendants' Exhibit before the Special Examiner, No. 131, Stephen Potter, Special Examiner," and is attached hereto.)

San Francisco, Friday, October 6th, 1893.

Mr. Call—Mr. Redding, regarding the map filed in evidence, which purports to be a map filed by the Southern Pacific Railroad Company in the Interior Department in the year 1871, marked "Defendants' Exhibit before the Special Examiner, No. 35," I desire that the map filed should remain filed with the Special Examiner as offered, and that it should not be removed upon making any copy, and you are required to produce such map in order that it may remain in the custody of the Special Examiner.

Mr. Redding—I think there was a stipulation made in regard to that map at the time of its admission, and I am not sure what particular exhibit you mean. We will have to turn to the exhibits and find out. I remember one exhibit was offered by us, which, in common with the others, we agreed to have certified

copies stand in lieu thereof, and you stated that it would not be necessary to make a copy of the whole State of California, as on that map delineated, but only that portion of the State covered by the location of the road. Is that the map you refer to?

Mr. Call—I refer to the map of 1871, and I will give the exhibit number, and I wish to say that if any talk was had in reference to taking that map out upon leaving a copy, that it was done inadvertently, and that, whether that is so or not, I now desire that the map should be produced and filed with the evidence.

Mr. Redding—I observe that the map is filed, and so far as the defendants are concerned, shall remain filed. We do not care to make a copy of it, inasmuch as it is an exemplified copy of the original on file in the Interior Department.

Mr. Call—That is satisfactory.

Testimony of A. N. Towne:

A. N. Towne, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. Redding—Q. What is your present occupation?

A. I am Second Vice-President and General Manager of the Southern Pacific Company.

Q. What is your range of duties in connection with that position with reference to the transportation of passengers and freight from various points in the State of California and from out of California into it?

A. My range of duties is very extended.

Q. Does it include an intimate knowledge of the facilities of ingress and egress of the State of California for transportation purposes? A. Yes, sir.

Mr. Call—Mr. Redding, you are referring to what Railroad Company?

Mr. Redding—The Southern Pacific Company.

Q. Are you familiar with the harbor facilities of the coast of California, extending from Point Concepcion to San Diego?

A. Generally, but more especially with those harbors where we have large transactions.

Q. What harbors are those? A. San Pedro.

Q. Where is San Pedro?

A. San Pedro is south and west of Los Angeles 22 miles, formerly known as Wilmington Harbor; also Santa Monica, now called Port Los Angeles, that is about 21 miles west of Los Angeles.

Q. Are you also a director of the Southern Pacific Railroad Company?

A. I am.

Q. Do you have to do with the transportation provided by the Southern Pacific Railroad Company over its lines?

A. Yes, sir.

Q. I am now referring to one of the defendants in this action?

A. Yes, sir.

Q. From your knowledge of the portions of California which you have spoken of with reference to transportation facilities, if you were called upon to take part in the construction of a railroad from a

point on the 35th parallel of latitude, near Needles, and where the 35th parallel crossed the Colorado River, and thence to construct a railroad by the most practicable and eligible route to the Pacific, and taking into consideration the facilities afforded for international transportation from a point on the Pacific to be reached, which point do you know, from your knowledge, would be the best to arrive at, taking the range of the coast of California from Point Concepcion to San Diego?

(Question objected to by Mr. Call as incompetent, immaterial and irrelevant, and not the best evidence; and upon the further ground that the lands in suit herein were excepted out of the grant to the Southern Pacific Railroad Company, by the terms and conditions of the Act of Congress of March 3, 1871, and by the terms and conditions of the Act of Congress of July 27, 1866; and upon the further ground that the lands in suit herein were withdrawn for the Atlantic & Pacific Railroad Company, and were reserved before the Southern Pacific Railroad Company filed its map of definite location in the Interior Department; and upon the further ground that the matters in issue in this suit have been finally decided and adjudicated by the Supreme Court of the United States, and by the United States Circuit Court for the Southern District of California, as shown by the records of such decisions in evidence herein; and upon the further ground that the Southern Pacific Railroad Company, to which a grant was made by the Act of Congress of March 3, 1871, by entering into the articles of consolidation and amalgamation, in evi-

dence herein, marked "Master's Exhibits 1, 2 and 3, Examiner, Nos. 88 and 89," has surrendered to the United States all interest in these lands, and surrendered to the United States in each such case of consolidation, all right to earn such lands by constructing a railroad; and all franchises granted by said Acts; and upon the further ground that the Southern Pacific Railroad Company, by its lease to the Southern Pacific Company of Kentucky, in evidence herein, marked, "Exhibit before the Special Examiner, M," has put it beyond its power to comply with any of the terms and conditions of the Acts of Congress of March 3, 1871, or July 27, 1866; and upon the further ground, that the map of definite location of the Atlantic & Pacific Railroad Company from Springfield, Missouri, by way of the Colorado River to the Pacific Ocean, has been judicially determined to be a good and sufficient map of definite location by the Secretary of the Interior, acting in his discretion, and having exclusive cognizance of such matter.)

The Witness—I understand you desire to know what I would regard the most practicable route to reach the ocean?

Mr. Redding—Yes, the most practicable and eligible point on the ocean to be reached?

(Same objection.)

A. In that connection I would say, I would have followed naturally the easy lines down the Colorado River to near Yuma, and across the desert to San Diego Harbor, or to Wilmington Harbor, either of which could have been reached better than they reached it by the way the road was built from the Needles.

Q. Do you know which affords the better harbor facilities—Ventura or Wilmington?

(Same objection.)

A. Wilmington.

Mr. Call—Is it understood the words “same objection,” apply to the previous objection without repeating it at length?

Mr. Redding—Yes, that is our understanding all through this hearing.

Mr. Redding—Q. Which affords the better harbor facilities—Ventura or Santa Monica?

(Same objection.)

A. Santa Monica.

Q. Why is it the fact that either Wilmington or Santa Monica affords better harbor facilities than Ventura?

(Same objection.)

A. On account of depth of water and shelter.

Q. How is it with reference to the country near and adjacent to these harbors as to population and products?

(Same objection.)

A. The products of Ventura are large in a small way; for instance, beans, fruit, and the like; it is a very productive country, but it is very narrow, bounded on the west by the ocean and on the east by a high range of mountains that are not available for cultivation very far back from the ocean.

Q. You mean that the mountains are very far back from the ocean, or the range of cultivation does not go back very far—which?

(Same objection.)

A. The range of cultivation does not go back very far; the reverse is the fact with regard to either

of the other points; there is a large back country, very productive, very rich in everything for the production of cereals, of fruits, and everything else, that might be blended together, with a very prosperous and wealthy settlement.

Q. What do you know with reference to the shallowness or depth of water of the ocean or harbor, as the case may be, near Ventura and at Ventura?

(Same objection.)

A. I am not competent to answer that question understandingly; the engineers, who are familiar with the subject, could tell you in regard to that.

Q. Have you been instrumental, or have you taken part, in the construction of railroads in the State of California?

(Same objection.)

A. Yes, sir.

Q. For how many years?

(Same objection.)

A. Almost twenty-five years.

Q. Are you familiar with the topography of the State of California from the Needles down to Fort Yuma on the eastern line of the State of California?

(Same objection.)

A. I am not, never having been up the river or down from the Needles; I am only familiar with the country as between Mojave and the Needles.

Q. You testified that a more practicable and eligible route than the one now used by a constructed railroad would be from the Needles down to Yuma, and thence over to San Diego?

(Same objection.)

A. I judge it, by the map, that it would be very easy for anyone to arrive at that conclusion.

CROSS-EXAMINATION.

Mr. Call—Q. Do you know what harbor facilities in the way of wharves have heretofore been at Ventura?

A. Very limited.

Q. There heretofore has been a wharf for some years back at Ventura, has there not?

A. Yes, sir; for many years before the railroad was there, there was a little embarcadero used, not only for a steamer line that occasionally crept in there, but for sailing vessels as well.

Q. Ventura is an old town, is it not—an old settlement?

A. It is an old mission, that did not have much settlement until after the road went through, and really has not much settlement now, what is settled up; it is not a large place.

RE-DIRECT EXAMINATION.

Mr. Redding—I understand you to state, from your knowledge of the country, that you knew that the mountains came close to the seashore at Ventura?

(Same objection.)

A. Yes, sir; very closely down to the seashore all along there for many miles.

Q. What do you state to be the fact with reference to the range of country capable of producing cereals and other products in that locality of the State?

(Same objection.)

A. Excellent, everything desirable, very productive soil, sunshine, and an abundance of irrigation now coming in.

Q. I ask you as to the range or extent?

(Same objection.)

A. The range of the cultivatable ground?

Q. What is your knowledge as to the range of country in extent capable of supporting population and products, as compared with the country around Wilmington and Los Angeles and San Pedro?

(Same objection.)

A. There is no comparison whatever; in the former case, it is a narrow strip of ground for many miles, while in the latter, referring to San Diego, to Wilmington and to Port Los Angeles, there is a wide expanse of country already settled, and to be settled in years to come.

RE-CROSS EXAMINATION.

Mr. Call—Q. Referring to the mountains coming close towards the sea near Ventura, what is the condition of the topography in that respect immediately north of Ventura up the coast?

A. It widens out perhaps a little, not very much.

Q. But right immediately adjacent to Ventura it is very narrow?

A. For fifteen miles all along it is very narrow.

Q. How wide is it in its narrowest place?

A. I remember at one time down the coast we wanted room for depot facilities, but had not room for that.

Q. Was it not practicable to get a railroad along there except by building immediately on the shore at that point?

A. No, sir, not practicable; all things are possible, so far as the construction of a road is concerned, I believe; I believe a road can be built almost in any country, and over any range of mountains, but not practicably.

Where I have used the word "Ventura" in my testimony, it has been used as an abbreviation of San Buenaventura.

A. N. TOWNE.

Testimony of E. H. Lamme:

E. H. Lamme, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. Redding—Q. What official position do you occupy with reference to the Circuit Court of the Ninth Circuit, Southern District of California?

A. Standing Examiner and Master in Chancery.

Q. Has the case of United States against the Southern Pacific Railroad Company, et al., No. 184, pending in that Court, been referred to you?

A. It has.

Q. For what purpose?

A. For the purpose of taking the testimony, and reporting the testimony to the Court.

Q. Have you, in your possession, exhibits introduced by the Government in this case?

A. I have.

Q. Are they here? A. They are.

Q. Will you please state whether you have Exhibit No. 10 introduced by the Government in this case?

A. Yes, sir; I have.

Q. Will you please hand it to Mr. William Hood?

A. I wish to say, in connection with that exhibit, that the original, or another map, was filed, and under the order of the Court, this is a certified copy made by the Clerk, which is substituted in place of the original map, of which this is a copy, and this is the exhibit that was filed before me by the Government, with the certificate of the Clerk of the United States Circuit Court, Southern District of California.

(No cross-examination.)

(It is agreed that the signature of E. H. Lamme, a witness called for the defendants, to his testimony, be waived; and that his testimony shall stand in this case to have the same effect as if signed by him.)

(William Hood was then recalled, and his testimony taken at this time will be found in this record immediately following his testimony heretofore given, it being placed at that point in the record for convenience in signing.)

Mr. Call—Mr. Redding, heretofore I asked you to produce the letter from the Department of the Interior, transmitting to you Defendants' Exhibit before the Special Examiner, No. 35. Have you produced such letter?

Mr. Redding—I do not know whether that came to me from the Interior Department direct, or through our Washington attorney. If it came to me direct

from the Interior Department, I must have a letter so stating. If it came to me from our attorney or attorneys in Washington, I must have a letter from them, and they must have a letter from the Interior Department to them, transmitting the copy. I will either produce for you, with pleasure, the letter from the Interior Department to me, enclosing that map, or both letters, namely, the one from the Interior Department to our attorneys in Washington, or possibly in New York, inclosing the map to them, and their letter to me sending the map. Will that be satisfactory?

Mr. Call—Yes; that will be satisfactory. I will ask, though, that that be done as soon as convenient.

Mr. Redding—I shall do it at my first opportunity, of course. These exemplified copies come at all times, at frequent intervals, and sometimes with correspondence and sometimes without, but whatever I have of record, or whatever is of record from the Interior Department concerning the map, I shall furnish you with pleasure; and if I cannot get it, why, you certainly can. I notice that the certificate on Exhibit 35 is dated April 18th, 1891, so the correspondence transmitting the map must be around that date.

Mr. Call—I do not know anything about that. I was relying upon your statement that the map was transmitted to you from the Interior Department.

Mr. Redding—I stated that I thought it was, I am not sure, but whatever the means of getting it, I shall be pleased to show it to you as soon as I can find it.

Mr. Call—I move the Court not to consider, but to exclude from the record the testimony heretofore given of Jerome Madden, Joseph L. Willett, William

Hood, G. L. Lansing, A. N. Towne, D. G. Scofield, Alexander Cook, Peter Hamilton, William Ferguson, Ira H. Bradshaw, and William H. Pratt, and of each thereof, and also the exhibits filed before the Special Examiner by the defendants, Nos. from 1 to , inclusive, and each thereof, upon the grounds that the evidence is incompetent, immaterial and irrelevant, and not the best evidence; and upon the further ground that the lands in suit herein were excepted out of the grant to the Southern Pacific Railroad Company by the terms and conditions of the Act of Congress of March 3, 1871, and by the terms and conditions of the Act of Congress of July 27, 1866; and upon the further ground that the lands in suit herein were withdrawn for the Atlantic & Pacific Railroad Company, and were reserved before the Southern Pacific Railroad Company filed its map of definite location in the Interior Department; and upon the further ground that the matters in issue in this suit have been finally decided and adjudicated by the Supreme Court of the United States, and by the United States Circuit Court for the Southern District of California, as shown by the records of such decisions in evidence herein; and upon the further ground that the Southern Pacific Railroad Company, to which a grant was made by the Act of Congress of March 3, 1871, by entering into the articles of consolidation and amalgamation, in evidence herein, marked Master's Exhibits 1, 2, and 3, and Defendants' Exhibits before the Special Examiner, Nos. 88 and 89, has surrendered to the United States all interest in these lands, and surrender to the United States in each such case

of consolidation, all right to earn such lands by constructing a railroad; and all franchises granted by said acts; and upon the further ground that the Southern Pacific Railroad Company, by its lease to the Southern Pacific Company of Kentucky, in evidence herein, marked "Exhibit before the Special Examiner, M," has put it beyond its power to comply with any of the terms and conditions of the Acts of Congress of March 3, 1871, or July 17, 1866; and upon the further ground that the map of definite location of the Atlantic & Pacific Railroad Company from Springfield, Missouri, by way of the Colorado River to the Pacific Ocean, has been judicially determined to be a good and sufficient map of definite location by the Secretary of the Interior, acting in his discretion, and having exclusive cognizance of such matter; and I object to each and all of said evidence upon the grounds stated.

Mr. Redding—The defendants object to this motion being made on any grounds not set forth by the Government counsel at the time the questions were asked of the witnesses. That is to say, it appears that the objections to Mr. Towne's testimony contained matters not made a part of the objection to testimony of witnesses prior thereto, nor was the substance of the objections, nor were the forms of the objections to Mr. Towne's testimony interposed by the Government counsel at the time the questions were asked any other witnesses; and I submit that the only objections that can be made by the Government counsel to any particular witness' testimony are those made at the time the testimony was taken.

Mr. Call—I insist that this is within the time and a reasonable time, for making all objections, and especially in view of the fact that the witnesses have not signed their testimony, and the examination is not concluded.

Mr. Redding—Mr. Call, with the exception of Mr. Pratt's testimony, and also the testimony of Mr. Cleve, Mr. Bradshaw and others, with reference to their being citizens, the testimony is closed, so far as the defendants are concerned, in San Francisco, at the present time. If you will admit that those four or five men are citizens of the United States, I will not call them, although they have got to come here to sign.

Mr. Call—I will look into the matter and let you know before concluding the taking of testimony.

Mr. Redding—Do I understand that the testimony of Mr. Willam Hood and Mr. Jerome Madden, as corrected, may now be signed by them not in our presence?

Mr. Call—Yes, sir.

(An adjournment was then taken by consent of counsel until Saturday, October 7th, 1893, at 9:30 A. M.)

San Francisco, Saturday, October 7th, 1893.

Mr. Call—Mr. Redding, during the examination of Mr. Lansing, I asked the witness to produce the lease from the Southern Pacific Railroad Company to the Southern Pacific Company of Kentucky, referred to in his testimony, and yesterday upon making some objections to evidence upon the grounds of that lease

having been made, you objected to my form of objection, although it only have recently come to the knowledge of the Court and of counsel that such lease was extant, and that lease has not yet been produced before the Special Examiner, and I now require that the original lease be produced.

Mr. Redding—The lease was produced before the Special Examiner, and at the Special Examiner's request, given into the hands of a copyist for a copy to be made, which, when made, will be certified by the Special Examiner in lieu of the original.

(William H. Pratt was then recalled as a witness on behalf of the defendant, and the testimony given by him at this time will be found in this record immediately following the testimony heretofore given by him, at which point in the record it has been placed for convenience of reference.)

(An adjournment was then taken by consent of counsel until Monday, October 9th, 1893, at 10:15 A. M.)

San Francisco, Monday, October 9th, 1893.

Mr. Call—I will admit that Mr. Cleve and Mr. Bradshaw are citizens of the United States, and were in 1880.

Mr. Redding—Mr. Examiner, was the original leasee of the Southern Pacific Company produced and marked by you "Exhibit before the Special Examiner, M. Stephen Potter, Special Examiner."

The Special Examiner—It was.

Mr. Redding—Here is a copy of it, made at the instance of the Government counsel, but at the expense of the defendant, which you will please certify to and substitute in lieu of the original.

Mr. Call—Did not counsel for defendants state that the original lease should not be taken from the office of the defendant Railroad Company?

The Special Examiner—He did.

Mr. Call—And the certified copy is now produced and filed by you, is it?

The Special Examiner—It is.

(A copy of the lease heretofore marked "Exhibit before the Special Examiner, M," is filed with the Special Examiner, and after comparison with the original, duly certified by him and attached hereto.)

Mr. Redding—Mr. Call, I will be in the receipt within a few hours, from Washington, by Wells, Fargo's Express, of certified copies of the reports of the Commissioners appointed by the President to inspect the completed portions of the Southern Pacific Railroad Company's branch line from Mojave by way of Los Angeles to Fort Yuma, and these reports that I will introduce are certified by the General Land Office, and cover the construction of the entire line of road in the sections between Mojave and Yuma.

I will also have certified copies of the correspondence and letters from the Interior Department to the President, transmitting those reports, and the President's approval of those constructed portions of the road, and the Commissioner's reports. I herewith offer them, and ask that the Special Examiner mark them as exhibits properly numbered on behalf of the

defendants before the Special Examiner; and I would like to withdraw the copies of the Commissioner's reports heretofore on file, and substitute the certified copies of the same in lieu thereof. Inasmuch as these documents may not arrive here until tomorrow morning, and as I understand you desire to leave San Francisco this afternoon, I will ask if, when they are received, they may be filed as of this time by the Special Examiner, and marked exhibits, subject to the objections which you may now make to their introduction.

Mr. Call—I will consent that the copies, when they arrive, may be substituted by the Special Examiner for the others offered, which may be withdrawn, subject to the following objections to each of said reports and the alleged approval thereof, and each letter of transmittal. I object as incompetent, immaterial and irrelevant, and not the best evidence; and upon the further ground that the lands in suit herein were excepted out of the grant to the Southern Pacific Railroad Company, by the terms and conditions of the Act of Congress of March 3, 1871, and by the terms and conditions of the Act of Congress of July 27, 1866; and upon the further ground that the lands in suit herein were withdrawn for the Atlantic and Pacific Railroad Company, and were reserved before the Southern Pacific Railroad Company filed its map of definite location in the Interior Department; and upon the further ground that the matters in issue in this suit have been finally decided and adjudicated by the Supreme Court of the United States, and by the United States Circuit Court for the Southern District

of California, as shown by the records of such decisions in evidence herein; and upon the further ground that the Southern Pacific Railroad Company, to which a grant was made by the Act of Congress of March 3, 1871, by entering into the articles of consolidation and amalgamation in evidence herein, marked Master's Exhibits 1, 2 and 3, and Defendants' Exhibits before the Special Examiner, Nos. 88 and 89, has surrendered to the United States all interest in these lands, and surrendered to the United States in each such case of consolidation all right to earn such lands by constructing a railroad, and all franchises granted by said acts; and upon the further ground that the Southern Pacific Railroad Company, by its lease to the Southern Pacific Company of Kentucky, in evidence herein, marked "Exhibit before the Special Examiner, M," has put it beyond its power to comply with any of the terms and conditions of the Acts of Congress of March 3, 1871, or July 27, 1866; and upon the further ground that the map of definite location of the Atlantic & Pacific Railroad Company from Springfield, Missouri, by way of the Colorado River to the Pacific Ocean, has been judicially determined to be a good and sufficient map of definite location by the Secretary of the Interior, acting in his discretion, and having exclusive cognizance of such map.

Mr. Redding—I understand, however, you will allow me to put them in subject to those objections, even after you have gone; is that right, Mr. Call?

Mr. Call—That is correct.

Mr. Redding—And that includes the letters of transmittal and the approval of the President?

Mr. Call—And subject to such further objections as may hereafter appear upon a personal inspection of the exhibit, but they may be deemed to be offered with the same effect as if they were now produced.

Mr. Redding—That includes the letters of transmittal and the President's approval?

Mr. Call—Yes, sir.

Mr. Redding—It is hereby stipulated between the counsel for complainants and respondents in this action that the testimony of the witnesses taken on behalf of the defendants (excepting the testimony of the following witnesses, namely: Jerome Madden, William Head, Clarence T. Cleve, Ira H. Bradshaw and G. L. Lansing, who have heretofore signed, or in regard to the signing of the testimony, a stipulation has already been entered into) may sign their testimony before the Special Examiner with the full force and effect as if they had signed the same in the presence of counsel, and with the further understanding that the Special Examiner shall make any corrections in the form of their testimony on the margin of the page where such correction is necessary, and where a correction is to be made in regard to any matter of substance, it shall be made in a marginal note certified to by the Special Examiner. Is that satisfactory, Mr. Call?

Mr. Call—That is satisfactory.

(The witness, D. G. Scofield, was then recalled for further cross-examination, and this portion of his testimony has been placed in this record immediately following his former testimony, for convenience in signing.)

(It is admitted that the witnesses, Peter Hamilton, Mrs. Thomas Allison, William Ferguson, James Hamilton, and Alexander Cook, are each citizens of the United States, and were in the year 1880, and have ever since been.)

Mr. Call—Mr. Redding, have you any more testimony to offer in San Francisco, as I have made arrangements to take the train this afternoon for Los Angeles.

Mr. Redding—No, I have not; not at the present time.

(In accordance with the agreement of counsel, certified copies of the plats of Townships 4 North, 18 West, 4 North, 19 West, 4 North, 20 West, and 3 North, 21 West, produced before the Special Examiner upon the cross-examination of the witness William H. Pratt, have been made by the Surveyor-General for California, and handed to the Special Examiner, and marked as follows:

(Certified copy of plat of Township 4 North, 18 West, is marked "Exhibit before the Special Examiner, N, Stephen Potter, Special Examiner.")

(Certified copy of the plat of Township 4 North, 19 West, is marked "Exhibit before the Special Examiner, O, Stephen Potter, Special Examiner.")

(Certified copy of plat of Township 4 North, 20 West, is marked "Exhibit before the Special Examiner, P, Stephen Potter, Special Examiner.")

(Certified copy of plat of Township 3 North, Range 21 West, is marked "Exhibit before the Special Examiner, Q, Stephen Potter, Special Examiner.")

And the same are attached hereto.

(Certified copies of the reports of the United States Railroad Commissioners, heretofore offered in evidence, have been handed by counsel for the defendants to the Special Examiner in accordance with the agreement of counsel, on page 769 of this record, and marked as follows:

Certified copy Report U. S. R. R. Commissioners, dated April 15th, 1874, is marked "Defendants' Exhibit before the Special Examiner, No. 29, Stephen Potter, Special Examiner."

Certified copy Report U. S. R. R. Commissioners, dated October 21st, 1875, is marked "Defendants' Exhibit before the Special Examiner, No. 30, Stephen Potter, Special Examiner."

Certified copy Report U. S. R. R. Commissioners, dated June 22d, 1876, is marked "Defendants' Exhibit before the Special Examiner, No. 31, Stephen Potter, Special Examiner."

Certified copy Report U. S. R. R. Commissioners, dated February 17th, 1877, is marked Defendants' Exhibit before the Special Examiner, No. 32, Stephen Potter, Special Examiner.

Certified copy Report U. S. R. R. Commissioners, dated December 6th, 1877, is marked Defendants' Exhibit before the Special Examiner, No. 33, Stephen Potter, Special Examiner."

And the same are annexed hereto.)

(Counsel for defendants has likewise handed to the Special Examiner certified copies of the correspondence in connection with the transmittal of the reports last above mentioned, which are marked as follows:

Certified copy of letter from the Department of the Interior, dated May 11th, 1874, signed B. R. Cowen, addressed to Hon. W. W. Curtis, Acting Commissioner G. L. O., is marked "Defendants' Exhibit before the Special Examiner, No. 132, Stephen Potter, Special Examiner."

Certified copy of letter from the Department of the Interior, dated 13th November, 1875, signed Z. Chandler, Secretary, addressed to Hon. S. S. Burdett, Commissioner General Land Office, is marked "Defendants' Exhibit before the Special Examiner, No. 133, Stephen Potter, Special Examiner."

Certified copy of letter from the Department of the Interior, signed Z. Chandler, Secretary, addressed to Hon. J. A. Williamson, Commissioner General Land Office, dated July 22d, 1876, is marked "Defendants' Exhibit before the Special Examiner, No. 134, Stephen Potter, Special Examiner."

Certified copy of letter from the Department of the Interior, dated March 3d, 1877, signed Charles T. Gorham, Acting Secretary, addressed to J. A. Williamson, Commissioner of the General Land Office, is marked "Defendants' Exhibit before the Special Examiner, No. 135, Stephen Potter, Special Examiner."

Certified copy of letter from the Department of the Interior, dated January 30th, 1878, signed C. Schurz, Secretary, addressed to Hon. J. A. Williamson, Commissioner of the General Land Office, is marked "Defendants' Exhibit before the Special Examiner, No. 136, Stephen Potter, Special Examiner."

And the same are attached hereto.)

(Counsel for defendants has also handed to the Special Examiner a letter from the Department of the

Interior, dated Washington, October 4th, 1893, addressed to D. A. Chambers, Esq., City, and signed by the Acting Secretary, which letter is marked "Defendants' Exhibit before the Special Examiner, No. 137, Stephen Potter, Special Examiner."

And the same is annexed hereto.)

(Counsel for defendants has also handed to the Special Examiner nine documents touching the matter of surveying costs, dated respectively April 11th, 1879, May 15th, 1883, November 30th, 1883, July 9th, 1884, November 25th, 1884, April 4th, 1885, April 17th, 1885, August 13th, 1885, and September 29th, 1887, which are marked as follows:

(See demand of Mr. Call for receipts for Surveyor-General's fees on page 142 of this record.)

Paper dated April 11th, 1879, S. P. R. R. Co. to C. P. R. R. Co. is marked "Exhibit before the Special Examiner, R, Stephen Potter, Special Examiner."

Paper dated May 15th, 1883, S. P. R. R. Co. to U. S. A., with receipts attached, is marked "Exhibit before the Special Examiner, S, Stephen Potter, Special Examiner."

Paper dated November 30th, 1883, S. P. R. R. Co. to C. P. R. R. Co., is marked "Exhibit before the Special Examiner, T, Stephen Potter, Special Examiner."

Paper dated July 9th, 1884, S. P. R. R. Co. to Sub-Treasurer of the United States, with receipts attached, is marked "Exhibit before the Special Examiner, U, Stephen Potter, Special Examiner."

Paper dated November 25th, 1884, S. P. R. R. Co. to Assistant Treasurer, U. S., San Francisco, with receipts attached, is marked "Exhibit before the Special Examiner, V, Stephen Potter, Special Examiner."

Paper dated April 4th, 1885, S. P. R. R. Co., to Assist. U. S. Treasurer, San Francisco, with receipts attached, is marked "Exhibit before the Special Examiner, W, Stephen Potter, Special Examiner."

Paper dated April 17th, 1885, S. P. R. R. Co. to Asst. Treasurer U. S., San Francisco, with receipts attached, is marked "Exhibit before the Special Examiner, X, Stephen Potter, Special Examiner."

Paper dated August 13th, 1885, S. P. R. R. Co. to Asst. Treasurer U. S., San Francisco, with receipts attached, is marked "Exhibit before the Special Examiner, Y, Stephen Potter, Special Examiner."

Paper dated September 29th, 1887, S. P. R. R. Co. to Assistant Treasurer U. S., San Francisco, with receipts attached, is marked "Exhibit before the Special Examiner, Z, Stephen Potter, Special Examiner."

And certified copies thereof are attached hereto.

(Counsel has stated to the Special Examiner that an additional paper of similar character cannot be found on file in the offices of the S. P. R. R. Co. at San Francisco, and that same must be in New York.)

(The Special Examiner, in accordance with the agreement of counsel [see pages 103 and 244], has permitted to be withdrawn from the record Defendants' Exhibits before the Special Examiner, 11, 12, 13, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28, and has stricken from the record the questions and answers touching the same, by drawing a line through the page on which such testimony appears, and signing his initials on the margin of such page.)

(In accordance with the request of Mr. Call, the Special Examiner has made a certified copy of the

portions of the minutes of the Board of Directors offered in evidence, contained in "Records Southern Pacific R. R. Co., A," and by agreement of counsel said certified copy has been marked "Exhibit before the Special Examiner, L, Stephen Potter, Special Examiner," and is attached hereto. (See pp. 553-556.)

(In accordance with the agreement between counsel on page 201 of this record, copies have been made of the maps marked in pencil "F," "G," "H" and "I," and certified to by the Special Examiner, and said certified copies are attached hereto marked respectively "Exhibits before the Special Examiner, F, G, H, and I.")

(In accordance with agreement of counsel copies of the maps "Defendants' Exhibits before the Special Examiner, Nos. 52, 53, and 57," have been made, and certified to by the Special Examiner, and said certified copies are attached hereto.)

(In accordance with agreement of counsel (see page 665 of this record) a copy has been made of "Defendants' Exhibit before the Special Examiner, No. 120, statement of account for transportation between U. S. and S. P. Co., and certified by the Special Examiner, and is attached hereto.)

I certify that the foregoing testimony was taken pursuant to the order of Court and stipulation hereunto prefixed, at Room 41 of the offices of the Southern Pacific Railroad Company, at the corner of Fourth and Townsend Streets, in the City and County of San Francisco, State of California, at the several times set forth therein, in my presence, and in the presence of counsel for the respective parties to the cause in

the caption hereof entitled; that previous to giving his testimony, each of the witnesses named was by me duly sworn to tell the truth, the whole truth, and nothing but the truth, in said cause; that said testimony was taken down in shorthand by myself, and reduced by me as a stenographer to typewriting, pursuant to stipulation and agreement of counsel; that said testimony, after being so reduced to typewriting, was read by the said witnesses, and in my presence signed by them, respectively, after making corrections thereto, except in those cases where such reading and signing were, by agreement of said counsel, waived, as in said testimony set forth.

Accompanying said testimony, and forming part thereof, are the several exhibits introduced in connection therewith, and referred to and specified therein, excepting such exhibits as were copied and certified to, by agreement of counsel, and in such cases said testimony is accompanied by said certified copies in lieu of the originals.

I further certify that I am not attorney nor of counsel for any of the parties to said cause, nor in any way interested in the event thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of October, A. D. 1893.

STEPHEN POTTER,
Special Examiner in Chancery, United States
Circuit Court, Southern District of California.

[Endorsed]: Circuit Court of the United States.
United States of America, Complainant, vs. Southern

Pacific R. R. Co., et al., Defendants. No. 184. Report of Special Examiner, Vol. 2. Filed Dec. 5, 1893.
Wm. M. Van Dyke, Clerk.

Circuit Court of the United States.

UNITED STATES OF AMERICA,
Complainant,
vs.
SOUTHERN PACIFIC R. R. CO.,
No. 184.
ET AL.,
Defendants.

Report of Special Examiner—Exhibits 1 to 33.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER.
(No. 1.)

Secretary's Office,
Southern Pacific Railroad Company,
San Francisco, May 10th, 1876.

I, J. L. Wilcutt, Secretary of the Southern Pacific Railroad Company, do hereby certify that at a meeting of the Board of Directors of said company, held this day, the following resolution was adopted by a unanimous vote:

RESOLVED AND ORDERED, That Jerome Madden be and he is hereby appointed the Land Agent of this company, for the purpose of selling, or contracting to sell, its lands in the State of California, or in any other State or Territory of the U. S., and to manage, conduct and carry on the business of its land office. And

he is hereby authorized and empowered, as such Land Agent, to sign his name for this company to such contracts, agreements and other documents or papers as may or shall be requisite and necessary for the full, complete and effectual transaction of all the business aforesaid.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the said company.

J. L. WILLCUTT,
Secretary S. P. R. R. Co.

(Seal of the Southern
Pacific Railroad Co.)

(Marked "Defendants' Exhibit before the Special Examiner, No. 1," Stephen Potter, Special Examiner.)

I hereby certify, that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,
Special Examiner.
San Francisco, Sept. 9, 1893.

[Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER.

(No. 3.)
DEED NO. 5,880.

TO ALL TO WHOM THESE PRESENTS SHALL COME:

The Southern Pacific Railroad Company, a corporation duly incorporated and organized under the laws of the State of California, and D. O. Mills and Gerrit L. Lansing, Trustees of all the lands of the said South-

ern Pacific Railroad Company, lying in the State of California, which remained unsold on the first day of April, A. D. 1875, send greeting:

WHEREAS, On the first day of April, A. D. 1875, the said Southern Pacific Railroad Company conveyed all its lands lying in the State of California, then unsold, of which the lands hereinafter described were and are a part, to D. O. Mills and Lloyd Tevis, to hold in trust, as security for the payment of forty-eight thousand bonds, forty-four thousand thereof for the sum of one thousand dollars each, and four thousand thereof for the sum of five hundred dollars each, issued and to be issued by said Southern Pacific Railroad Company in seven series, to be designated by the letters of the alphabet, commencing with the letter A, and followed by the succeeding letters in regular order to and including the letter G; Series A to consist of thirteen thousand bonds for one thousand dollars each, numbered from one to thirteen thousand, both inclusive, and four thousand bonds for five hundred dollars each, numbered from thirteen thousand and one to seventeen thousand, both inclusive; Series B to F, both inclusive, to consist of five thousand bonds each, for one thousand dollars each, numbered from seventeen thousand and one to forty-two thousand, both inclusive; Series G to consist of six thousand bonds for one thousand dollars each, numbered from forty-two thousand and one to forty-eight thousand, both inclusive. All of said bonds payable thirty years after date, with interest at the rate of six per centum per annum, payable semi-annually, said Series A to bear date April first, eighteen hundred and seventy-five,

and the said several succeeding series to bear such dates respectively as the Board of Directors of said Southern Pacific Railroad Company may direct; all of said bonds aggregating the sum of forty-six millions of dollars;

AND, WHEREAS, Said Deed of Trust, among other matters, provided that the said Southern Pacific Railroad Company should have the sole and exclusive control and management of said lands, with full power to make sales of the same upon such terms and conditions as might, from time to time, be agreed upon between the said Railroad Company and the said Trustees; and that when such sales had been made, and the purchase money fully paid, the said Company and the said Trustees should unite in a conveyance in fee simple of the land so sold to the purchaser or purchasers thereof, which conveyance should absolutely and forever release the lands so conveyed from any and all lien or incumbrance for or on account of said bonds, or any other debt, or obligation of the said Railroad Company;

AND, WHEREAS, on the 24th day of March, 1883, Lloyd Tevis, one of the Trustees, did resign his trust under said conveyance of the first of April 1875; and, whereas; on the 3rd day of April, 1883, the said D. O. Mills, the remaining Trustee under said conveyance, did, pursuant to the terms of his trust, nominate Gerrit L. Lansing, of the City of San Francisco, and State of California, to fill the vacancy caused by the resignation of said Lloyd Tevis;

AND, WHEREAS, On the 17th day of April, 1883, the Board of Directors of the said Southern Pacific Rail-

road Company, pursuant to the terms of said trust, did ratify and approve said nomination, and did appoint said Gerrit L. Lansing to fill said vacancy; and, whereas, on the 18th day of April, 1883, the said Gerrit L. Lansing did formally accept the position of Trustee, under said Deed of Trust;

AND, WHEREAS, Said Deed of Trust further provided, that, for the sake of convenience in making said conveyances, the said Trustees should have power to act, by attorney, duly nominated and appointed by them, jointly by letter of attorney, which should be duly acknowledged and recorded in each and all the counties in which said lands, or any part thereof, are situated, and that all deeds made in their names by such attorney should have the same force and effect as if made by them in person;

AND, WHEREAS, On the 21st day of April, 1883, said Trustees, D. O. Mills and Gerrit L. Lansing, acting under the power so vested in them, did nominate, constitute and appoint, by letter of attorney, duly acknowledged and recorded as aforesaid, Jerome Madden, of the City and County of San Francisco, and State of California, their true and lawful attorney, in their names, place and stead, to make, execute and deliver all conveyances required of them, as aforesaid.

AND WHEREAS, the said Railroad Company contracted to sell the lands hereinafter described pursuant to the foregoing conditions, to Clarence T. Cleve, of the County of San Joaquin, State of California, for the sum of four hundred (\$400.00) dollars, which

sum has been fully paid to the said D. O. Mills and Gerrit L. Lansing, Trustees, as aforesaid.

NOW THEREFORE, in consideration of the premises, and the said sum of four hundred (\$400.00) dollars, the receipt whereof is hereby acknowledged, the said Southern Pacific Railroad Company, and the said D. O. Mills and Gerrit L. Lansing, Trustees, as aforesaid, do grant, bargain, sell and convey to the said Clarence T. Cleve, and to his heirs and assigns, the following described tract of land situate, lying and being in the County of Los Angeles, and State of California, to-wit: the northwest quarter (NW. $\frac{1}{4}$) of Section No. Fifteen (15), in Township Five (5), North of Range Eleven (11), West, San Bernardino Base and Meridian, containing one hundred and sixty (160.00) 00-100 acres, according to the United States surveys, together with all the privileges and appurtenances thereunto appertaining and belonging: excepting and reserving all liability on the part of the Southern Pacific Railroad Company for taxes thereon since August 27th, 1886, the said purchaser having heretofore agreed with said company to pay the same, and also reserving all claim of the United States to said tract as mineral land.

TO HAVE AND TO HOLD, the aforesaid premises, to the said Clarence T. Cleve, his heirs and assigns, to his and their use and behoof forever.

IN TESTIMONY WHEREOF, The said Southern Pacific Railroad Company has caused these presents to be signed by its President and Secretary, and sealed with its Corporate Seal, and the said D. O. Mills and Gerrit L. Lansing, Trustees, by their said attorney,

Jerome Madden, have subscribed their names and affixed their Seals, this Twelfth day of August, A. D. 1890.

(Seal of the
Southern Pa-
cific Railroad
Company.)

D. O. MILLS,

GERRIT L. LANSING,

(Seal.)

) Trustees.

CHAS. F. CROCKER,

Pres. S. P. R. R. Co.

J. L. WILLCUTT,

Sec. S. P. R. R. Co.

By JEROME MADDEN,

Their Joint Attorney-in-Fact.

STATE OF CALIFORNIA,

)

City and County of San Francisco.) ss.

On this Twelfth day of August, in the year one thousand eight hundred and ninety, before me, E. B. Ryan, a Notary Public in and for said City and County of San Francisco, State of California, personally appeared Charles F. Crocker, known to me to be the President, and J. L. Willeutt, known to me to be the Secretary, of the corporation that executed the within instrument; and each of them acknowledged to me that such corporation executed the same; also, on this, the day aforesaid, before me, the Notary Public aforesaid, personally appeared Jerome Madden, known to me to be the person whose name is subscribed to the within instrument, as the attorney-in-fact of D. O. Mills and Gerrit L. Lansing, and acknowledged to me that he subscribed the names of the said D. O. Mills and Gerrit L. Lansing thereto as principals, and his own name as attorney-in-fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office, in the City and County of San Francisco, State of California, on the day and year above written.

(Notarial Seal.)

E. B. RYAN,

Notary Public in and for the City and County
of San Francisco, and State of California.

[Endorsed]: Deed No. 5,880. Southern Pacific Railroad Co., D. O. Mills and Gerrit L. Lansing, Trustees, to Clarence T. Cleve. Deed. Dated August 12th, 1890. Recorded at request of W., F. & Co., Sep. 4, 1890, at 36 min. past 1 p. m., in Book 662, Page 281 of Deeds, Los Angeles County-Records. John W. Francis, County Recorder, by W. F. X. Parker, Deputy. Fees, \$2.30. Folio 16. (Marked Defendants' Exhibit before the Special Examiner, No. 3, Stephen Potter, Special Examiner.)

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,

Special Examiner.

San Francisco, Sept. 9th, 1893.

[Endorsed]: Filed Dec. 5, 1893, Wm. M. Van Dyke,
Clerk.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER.

(No. 4.)

DEED No. 3057.

TO ALL TO WHOM THESE PRESENTS SHALL COME:

The Southern Pacific Railroad Company, a corporation duly incorporated and organized under the laws

of the State of California, and D. O. Mills and Gerrit L. Lansing, Trustees, of all the lands of the said Southern Pacific Railroad Company lying in the State of California which remained unsold on the first day of April, A. D. 1875, send greeting:

WHEREAS, on the first day of April, A. D. 1875, the said Southern Pacific Railroad Company conveyed all its lands lying in the State of California, then unsold, of which the lands hereinafter described were and are a part, to D. O. Mills and Lloyd Tevis, to hold in trust as security for the payment of forty-eight thousand bonds, forty-four thousand thereof for the sum of one thousand dollars each, and four thousand thereof for the sum of five hundred dollars each, issued and to be issued by said Southern Pacific Railroad Company in seven series, to be designated by the letters of the alphabet, commencing with the letter A, and followed by the succeeding letters in regular order to and including the letter G; Series A to consist of thirteen thousand bonds for one thousand dollars each, numbered from one to thirteen thousand, both inclusive, and four thousand bonds for five hundred dollars each, numbered from thirteen thousand and one to seventeen thousand, both inclusive; Series B to F, both inclusive, to consist of five thousand bonds each, for one thousand dollars each, numbered from seventeen thousand and one to forty-two thousand, both inclusive; Series G to consist of six thousand bonds for one thousand dollars each, numbered from forty-two thousand and one to forty-eight thousand, both inclusive; all of said bonds payable thirty years after date, with interest at the rate of six

per centum per annum, payable semi-annually, said Series A to bear date April first, eighteen hundred and seventy-five and the said several succeeding series to bear such dates respectively as the Board of Directors of said Southern Pacific Railroad Company may direct; all of said bonds aggregating the sum of forty-six millions of dollars;

AND, WHEREAS, said Deed of Trust, among other matters, provided that the said Southern Pacific Railroad Company should have the sole and exclusive control and management of said lands, with full power to make sales of the same upon such terms and conditions as might, from time to time, be agreed upon between the said Railroad Company and the said Trustees; and that when such sales had been made, and the purchase money fully paid, the said Company and the said Trustees, should unite in a conveyance in fee simple of the lands so sold to the purchaser or purchasers thereof, which conveyance should absolutely and forever release the lands so conveyed from any and all lien, or incumbrance for, or on account of said bonds, or any other debt or obligation of the said Railroad Company;

AND, WHEREAS, on the 24th day of March, 1883, Lloyd Tevis, one of the Trustees, did resign his trust under said conveyance of the first of April, 1875; and, whereas, on the 3rd day of April, 1883, the said D. O. Mills, the remaining Trustee, under said conveyance, did, pursuant to the terms of his trust, nominate Gerrit L. Lansing, of the City of San Francisco and State of California, to fill the vacancy caused by the resignation of said Lloyd Tevis;

AND, WHEREAS, on the 17th day of April, 1883, the Board of Directors of the said Southern Pacific Railroad Company, pursuant to the terms of said trust, did ratify and approve said nomination, and did appoint said Gerrit L. Lansing to fill said vacancy; and, whereas, on the 18th day of April, 1883, the said Gerrit L. Lansing did formally accept the position of Trustee under said Deed of Trust;

AND, WHEREAS, said Deed of Trust further provided, that, for the sake of convenience in making said conveyances, the said Trustees should have power to act by attorney, duly nominated and appointed by them, jointly by letter of attorney, which should be duly acknowledged and recorded in each and all the counties in which said lands, or any part thereof are situated, and that all deeds made in their names by such attorney, should have the same force and effect as if made by them in person;

AND, WHEREAS, on the 21st day of April, 1883, said Trustees, D. O. Mills and Gerrit L. Lansing, acting under the power so vested in them, did nominate, constitute and appoint, by letter of attorney, duly acknowledged and recorded as aforesaid, Jerome Madden, of the City and County of San Francisco, and State of California, their true and lawful attorney, in their names, place and stead, to make, execute and deliver all conveyances required of them, as aforesaid.

AND WHEREAS, the said Railroad Company has sold the lands hereinafter described, pursuant to the foregoing conditions, to Peter Hamilton and Mrs. Thomas Allison, of the County of Solano, State of California, for the sum of sixteen hundred (\$1600.00) dollars,

which sum has been fully paid to the said D. O. Mills and Gerrit L. Lansing, Trustees, as aforesaid:

NOW THEREFORE, in consideration of the premises, and the said sum of sixteen hundred (\$1600.00) dollars the receipt whereof is hereby acknowledged, the said Southern Pacific Railroad Company, and the said D. O. Mills and Gerrit L. Lansing, Trustees, as aforesaid, do grant, bargain sell and convey to the said Peter Hamilton and Mrs. Thomas Allison, and to their heirs and assigns, the following described tract of land situate, lying and being in the County of Los Angeles, and State of California, to-wit: All of Section No. Thirty-five (35) in Township Seven (7) North of Range Thirteen (13) West, San Bernardino Base and Meridian, containing six hundred and forty (640.00) acres, according to the United States surveys, together with all the privileges and appurtenances thereunto appertaining and belonging; excepting and reserving all liability on the part of the Southern Pacific Railroad Company for taxes since 14th day of January, 1884, the grantee herein having heretofore agreed with said company to pay the same, and also reserving all claim of the United States to said tract as mineral land.

TO HAVE AND TO HOLD, the aforesaid premises, to the said Peter Hamilton and Mrs. Thomas Allison, their heirs and assigns, to them and their use and behoof forever.

IN TESTIMONY WHEREOF, the said Southern Pacific Railroad Company, has caused these presents to be signed by its President and Secretary, and sealed with its Corporate Seal; and the said D. O. Mills and Gerrit L. Lansing, Trustees, by their said attorney,

Jerome Madden, have subscribed their names and affixed their seals, this eighteenth day of January, A. D. 1889.

CHAS. F. CROCKER,

Pres. S. P. R. R. Co.

(Seal of the
Southern
Pacific
Railroad
Company.)

J. L. WILLCUTT,
Sec. S. P. R. R. Co.
D. O. MILLS, (Seal) }
GERRIT L. LANSING, (Seal) } Trustees
By JEROME MADDEN,

Their Joint Attorney-in-Fact.

STATE OF CALIFORNIA,)
City and County of San Francisco. } ss.

On this eighteenth day of January, in the year one thousand eight hundred and eighty-nine, before me, E. B. Ryan, a Notary Public in and for said City and County of San Francisco, State of California, personally appeared Charles F. Crocker, known to me to be the President, and J. L. Willcutt, known to me to be the Secretary, of the corporation that executed the within instrument; and each of them acknowledged to me that such corporation executed the same; also, on this, the day aforesaid, before me, the Notary Public aforesaid, personally appeared Jerome Madden, known to me to be the person whose name is subscribed to the within instrument as the attorney-in-fact of D. O. Mills and Gerrit L. Lansing, and acknowledged to me that he subscribed the names of the said D. O. Mills and Gerrit L. Lansing, thereto as principals, and his own name as attorney-in-fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the City and County of San Francisco, State of California, on the day and year above written.

(Notarial seal)

E. B. RYAN,

Notary Public in and for the City and County
of San Francisco, and State of California.

[Endorsed]: Deed No. 3,057. Southern Pacific Railroad Co., D. O. Mills and Gerrit L. Lansing, Trustees to Peter Hamilton and Mrs. Thomas Allison. Deed dated January 18th, 1889. Recorded at request of W., F. & Co., Dec. 20, 1889, at 2 min. past 2 p. m., in Book 616, page 215 of Deeds, Los Angeles County Records. John W. Francis, County Recorder. By W. F. X. Parker, Deputy. Fees 2.45, Folio 16.

(Marked Defendants' Exhibit before the Special Examiner, No. 4, Stephen Potter, Special Examiner.)

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct thereof.

STEPHEN POTTER,

Special Examiner.

San Francisco, Sept. 9th, 1893.

[Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER.
(No. 5.)

DEED NO. 3,053.

TO ALL TO WHOM THESE PRESENTS SHALL COME:

The Southern Pacific Railroad Company, a corporation duly incorporated and organized under the laws of the State of California, and D. O. Mills and Gerrit L. Lansing, Trustees of all the lands of the said Southern Pacific Railroad Company lying in the State of California which remained unsold on the first day of April, A. D. 1875, send greeting:

WHEREAS, On the first day of April, A. D. 1875, the said Southern Pacific Railroad Company conveyed all its lands lying in the State of California, then unsold, of which the lands hereinafter described were and are a part, to D. O. Mills and Lloyd Tevis, to hold in trust as security for the payment of forty-eight thousand bonds, forty-four thousand thereof for the sum of one thousand dollars each, and four thousand thereof for the sum of five hundred dollars each, issued and to be issued by said Southern Pacific Railroad Company in seven series, to be designated by the letters of the alphabet, commencing with the letter A, and followed by the succeeding letters in regular order to and including the letter G; Series A to consist of thirteen thousand bonds for one thousand dollars each, numbered from one to thirteen thousand, both inclusive, and four thousand bonds for five hundred dollars each, numbered from thirteen thousand and one to seventeen thousand, both inclusive; Series B to F, both inclusive, to consist of five thousand bonds each, for one thousand dollars each, numbered from seventeen thou-

sand and one to forty-two thousand, both inclusive; Series G to consist of six thousand bonds for one thousand dollars each, numbered from forty-two thousand and one to forty-eight thousand, both inclusive. All of said bonds payable thirty years after date, with interest at the rate of six per centum per annum, payable semi-annually, said series A to bear date April first, eighteen hundred and seventy-five, and the said several succeeding series to bear such dates respectively as the Board of Directors of said Southern Pacific Railroad Company may direct; all of said bonds aggregating the sum of forty-six millions of dollars;

AND WHEREAS, said Deed of Trust, among other matters, provided that the said Southern Pacific Railroad Company should have the sole and exclusive control and management of said lands, with full power to make sales of the same upon such terms and conditions as might, from time to time, be agreed upon between the said Railroad Company and the said trustees; and that when such sales had been made, and the purchase money fully paid, the said Company and the said trustees should unite in a conveyance in fee simple of the lands so sold to the purchaser or purchasers thereof, which conveyance should absolutely and forever release the lands so conveyed from any and all lien or incumbrance for or on account of said bonds, or any other debt or obligation of the said railroad company;

AND WHEREAS, on the 24th day of March, 1883, Lloyd Tevis, one of the trustees, did resign his trust under said conveyance of the first of April, 1875; and

whereas, on the 3rd day of April, 1883, the said D. O. Mills, the remaining Trustee under said conveyance, did, pursuant to the terms of his trust, nominate Gerrit L. Lansing, of the City of San Francisco, and State of California, to fill the vacancy caused by the resignation of said Lloyd Tevis;

AND WHEREAS, on the 17th day of April, 1883, the Board of Directors of the said Southern Pacific Railroad Company, pursuant to the terms of said trust, did ratify and approve said nomination, and did appoint said Gerrit L. Lansing to fill said vacancy; and whereas, on the 18th day of April, 1883, the said Gerrit L. Lansing did formally accept the position of Trustee under said Deed of Trust;

AND WHEREAS, said Deed of Trust further provided, that, for the sake of convenience in making said conveyances, the said Trustees should have power to act, by attorney, duly nominated and appointed by them, jointly by letter of attorney, which should be duly acknowledged and recorded in each and all the counties in which said lands, or any part thereof, are situated, and that all deeds made in their names by such attorney should have the same force and effect as if made by them in person.

AND WHEREAS, on the 21st day of April, 1883, said Trustees, D. O. Mills and Gerrit L. Lansing, acting under the power so vested in them, did nominate, constitute and appoint, by letter of attorney, duly acknowledged and recorded as aforesaid, Jerome Madden, of the City and County of San Francisco, and State of California, their true and lawful attorney, in their names, place and stead, to make, execute and deliver all conveyances required of them, as aforesaid.

AND WHEREAS, the said Railroad Company has sold the lands hereinafter described, pursuant to the foregoing conditions, to William Ferguson and James Hamilton, of the County of Solano, State of California, for the sum of sixteen hundred (\$1,600.00) dollars, which sum has been fully paid to the said D. O. Mills and Gerrit L. Lansing, Trustees, as aforesaid.

Now, THEREFORE, in consideration of the premises, and the said sum of Sixteen Hundred (\$1,600.00) Dollars, the receipt whereof is hereby acknowledged, the said Southern Pacific Railroad Company, and the said D. O. Mills and Gerrit L. Lansing, Trustees, as aforesaid, do grant, bargain sell, and convey to the said William Ferguson and James Hamilton, and to their heirs and assigns, the following described tract of land, situate, lying and being in the County of Los Angeles, and State of California, to-wit: All of Section No. Twenty-seven (27) in Township Seven (7) North of Range Thirteen (13) West, San Bernardino Base and Meridian, containing six hundred and forty (640) acres, according to the United State surveys, together with all the privileges and appurtenances thereunto appertaining and belonging; excepting and reserving all liability on the part of the Southern Pacific Railroad Company for taxes, since 14th of January, 1884, the grantee herein having heretofore agreed with said company to pay the same; and also reserving all claim of the United States to said tract as mineral land.

TO HAVE AND TO HOLD, the aforesaid premises, to the said William Ferguson and James Hamilton, their heirs and assigns to them, and their use, and behoof forever.

IN TESTIMONY WHEREOF, the said Southern Pacific Railroad Company has caused these presents to be signed by its President and Secretary, and sealed with its corporate seal; and the said D. O. Mills and Gerrit L. Lansing, Trustees, by their said attorney, Jerome Madden, having subscribed their names and affixed their seals, this eighteenth day of January, A. D. 1889.

CHAS. F. CROCKER,

(Seal of the Pres. S. P. R. R. Co.
Southern Pacific J. L. WILCUTT,
Railroad Company.) Sec. S. P. R. R. Co.

D. O. MILLS, (Seal) } Trustees.
GERRIT L. LANSING, (Seal) }

By JEROME MADDEN,
Their Joint Attorney-in-fact.

STATE OF CALIFORNIA, } ss.
City and County of San Francisco, }

On this eighteenth day of January, in the year one thousand eight hundred and eighty-nine, before me, E. B. Ryan, a Notary Public in and for said City and County of San Francisco, State of California, personally appeared Charles F. Crocker, known to me to be the President, and J. L. Wilcutt, known to me to be the Secretary, of the corporation that executed the within instrument, and each of them acknowledged to me that such corporation executed the same; also, on this, the day aforesaid, before me, the Notary Public aforesaid, personally appeared Jerome Madden, known to me to be the person whose name is subscribed to the within instrument, as the

attorney-in-fact of D. O. Mills and Gerrit L. Lansing, and acknowledged to me that he subscribed the names of the said D. O. Mills and Gerrit L. Lansing thereto as principals, and his own name as attorney-in-fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal, at my office, in the City and County of San Francisco, State of California, on the day and year above written.

(Notarial seal.) E. B. RYAN,

Notary Public in and for the City and County
of San Francisco and State of California.

[Endorsed]: Deed No. 3,053. Southern Pacific Railroad Co., D. O. Mills and Gerrit L. Lansing, Trustees, to William Ferguson and James Hamilton. Deed. Dated January 18th, 1889. Recorded at request of W., F. & Co., Dec. 20, 1889, at 3 min. past 2 p. m., in Book 616, page 222, of Deeds, Los Angeles County Records. John W. Francis, County Recorder. By W. F. X. Parker, Deputy. Fees, \$2.45; Folio 16.

(Marked Defendants' Exhibit before the Special Examiner, No. 5, Stephen Potter, Special Examiner.)

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, Sept. 9th, 1893.

[Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER.

(No. 6.)

DEED No. 3,062.

TO ALL TO WHOM THESE PRESENTS SHALL COME:

The Southern Pacific Railroad Company, a corporation duly incorporated and organized under the laws of the State of California, and D. O. Mills and Gerrit L. Lansing, Trustees of all the lands of said Southern Pacific Railroad Company lying in the State of California which remained unsold on the first day of April, A. D. 1875, send greeting:

WHEREAS, on the first day of April, A. D. 1875, the said Southern Pacific Railroad Company conveyed all its lands lying in the State of California then unsold, of which the lands hereinafter described were and are a part, to D. O. Mills and Lloyd Tevis, to hold in trust as security for the payment of forty-eight thousand bonds, forty-four thousand thereof for the sum of one thousand dollars each, and four thousand thereof for the sum of five hundred dollars each, issued and to be issued by said Southern Pacific Railroad Company in seven series, to be designated by the letters of the alphabet, commencing with the letter A, and followed by the succeeding letters in regular order to and including the letter G; Series A to consist of thirteen thousand bonds for one thousand dollars each, numbered from one to thirteen thousand, both inclusive, and four thousand bonds for five hundred dollars each, numbered from thirteen thousand and one to seventeen thousand, both inclusive; Series B to F, both inclusive, to consist of five thousand bonds each for one thousand dollars each, numbered from

seventeen thousand and one to forty-two thousand, both inclusive; Series G to consist of six thousand bonds for one thousand dollars each, numbered from forty-two thousand and one to forty-eight thousand, both inclusive; all of said bonds payable thirty years after date, with interest at the rate of six per centum per annum, payable semi-annually, said Series A to bear date April first, eighteen hundred and seventy-five, and the said several succeeding series to bear such dates respectively as the Board of Directors of said Southern Pacific Railroad Company may direct; all of said bonds aggregating the sum of forty-six millions of dollars.

AND, WHEREAS, said Deed of Trust, among other matters, provided that the said Southern Pacific Railroad Company should have the sole and exclusive control and management of said lands, with full power to make sales of the same upon such terms and conditions as might, from time to time, be agreed upon between the said Railroad Company and the said Trustees; and that when such sales had been made, and the purchase money fully paid, the said company and the said Trustees should unite in a conveyance in fee simple of the lands so sold to the purchaser or purchasers thereof, which conveyance should absolutely and forever release the lands so conveyed from any and all lien or incumbrance for or on account of said bonds, or any other debt or obligation of the said Railroad Company;

AND, WHEREAS, on the 24th day of March, 1883, Lloyd Tevis, one of the Trustees, did resign his trust under said conveyance of the first of April, 1875; and

whereas, on the 3d day of April, 1883, the said D. O. Mills, the remaining Trustee under said conveyance, did, pursuant to the terms of his trust, nominate Gerrit L. Lansing, of the City of San Francisco and State of California, to fill the vacancy caused by the resignation of said Lloyd Tevis;

AND WHEREAS, on the 17th day of April, 1883, the Board of Directors of the said Southern Pacific Railroad Company, pursuant to the terms of said trust, did ratify and approve said nomination, and did appoint said Gerrit L. Lansing to fill said vacancy; and whereas, on the 18th day of April, 1883, the said Gerrit L. Lansing did formally accept the position of Trustee under said deed of trust;

AND WHEREAS, said deed of trust further provided, that, for the sake of convenience in making said conveyances, the said Trustees should have power to act by attorney, duly nominated and appointed by them jointly by letter of attorney, which should be duly acknowledged and recorded in each and all the counties in which said lands, or any part thereof, are situated, and that all deeds made in their names by such attorney should have the same force and effect as if made by them in person:

AND WHEREAS, on the 21st day of April, 1883, said Trustees, D. O. Mills and Gerrit L. Lansing, acting under the power so vested in them, did nominate, constitute and appoint, by letter of attorney duly acknowledged and recorded as aforesaid, Jerome Madden, of the City and County of San Francisco, and State of California, their true and lawful attorney, in their names, place and stead, to make, execute and deliver all conveyances required of them, as aforesaid.

AND WHEREAS, the said Railroad Company has sold the lands hereinafter described, pursuant to the foregoing conditions, to M. L. Wicks and Peter Cook, of the County of Los Angeles, in the State of California, for the sum of sixteen hundred (\$1600.00) 00.100 dollars, which sum has been by them fully paid, to the said D. O. Mills and Gerrit L. Lansing, Trustees, as aforesaid;

Now, THEREFORE, in consideration of the premises, and the said sum of sixteen hundred (\$1600.00) 00.100 dollars, the receipt whereof is hereby acknowledged, the said Southern Pacific Railroad Company, and the said D. O. Mills and Gerrit L. Lansing, Trustees, as aforesaid, do grant, bargain, sell and convey to the said M. L. Wicks and Peter Cook, and their heirs and assigns, the following described tract of land situate, lying and being in the County of Los Angeles and State of California, to wit: All of Section one (1) in Township Six (6), North of Range Thirteen (13) West, San Bernardino Base and Meridian, containing six hundred and forty (640.00) 00.100 acres, according to the United States surveys, together with all the privileges and appurtenances thereunto appertaining and belonging, reserving all claim of the United States to the same as mineral land.

To have and to hold the aforesaid premises, to the said M. L. Wicks and Peter Cook, their heirs and assigns, to them and their use and behoof forever.

In TESTIMONY WHEREOF, the said Southern Pacific Railroad Company has caused these presents to be signed by its Vice-President and Secretary, and sealed with its corporate seal; and the said D. O. Mills and

Gerrit L. Lansing, Trustees, by their said attorney, Jerome Madden, have subscribed their names and affixed their seals, this twenty-first (21st) day of June, A. D. 1887.

CHAS. F. CROCKER,

(Seal of the	Vice-Pres. S. P. R. R. Co.
Southern Pacific	J. L. WILLCUTT,
Railroad Company.)	Sec. S. P. R. R. Co.

D. O. MILLS,	(SEAL)	Trustees.
GERRIT L. LANSING, (Seal)		

By JEROME MADDEN,
Their Joint Attorney-in-Fact.

STATE OF CALIFORNIA,	ss.
City and County of San Francisco.	

On this twenty-first (21st) day of June, in the year one thousand eight hundred and eighty-seven (1887) before me, E. B. Ryan, a notary public in and for said City and County of San Francisco, State of California, personally appeared Charles F. Crocker, known to me to be the Vice-President, and J. L. Willcutt, known to me to be the Secretary of the corporation that executed the within instrument, and each of them acknowledged to me that such corporation executed the same; also on this, the day aforesaid, before me, the notary public aforesaid, personally appeared Jerome Madden, known to me to be the person whose name is subscribed to the within instrument, as the attorney-in-fact of D. O. Mills and Gerrit L. Lansing, and acknowledged to me that he subscribed the

names of the said D. O. Mills and Gerrit L. Lansing thereto as principals, and his own name as attorney-in-fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the City and County of San Francisco, State of California, on the day and year above written.

(Notarial seal) E. B. RYAN,

Notary Public in and for the City and County
of San Francisco, and State of California.

[Endorsed]: Deed No. 3062, Southern Pacific Railroad Co. D. O. Mills and Gerrit L. Lansing, Trustees, to M. L. Wicks and Peter Cook. Deed dated June 21st, 1887. Recorded at request of M. L. Wicks, July 11, 1887, at 26 min. past 4 p. m., in Book 253, page 294 of Deeds, Los Angeles County Records. Frank A. Gibson, County Recorder. By Arthur Bray, Deputy.

(Marked Defendants' Exhibit before the Special Examiner, No. 6, Stephen Potter, Special Examiner.)

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, Sept. 9th, 1893.

[Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER.
(No. 7.)

THIS INDENTURE, made the 17th day of November, in the year of our Lord one thousand eight hundred and eighty-seven, between Peter Cook, party of the first part, and Alexander Cook, the party of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of five dollars gold coin of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, and convey unto the said party of the second part, and to his heirs and assigns forever, all that certain lot and parcel of land situate, lying and being in the Antelope Valley, County of Los Angeles, State of California, and bounded and particularly described as follows, to-wit: The west one-half of Section One (1), Township Six (6) North, Range Thirteen (13) West, San Bernardino Base and Meridian, containing three hundred and twenty acres of land, according to official survey of the United States.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

To have and to hold, all and singular the said premises, together with the appurtenances unto the party of the second part, and to his heirs and assigns forever.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal the day and year first above written.

PETER COOK. (Seal).

Signed, sealed and delivered in the presence of

W. G. DOZIER.

STATE OF CALIFORNIA, } ss.
County of Solano. }

On this 27th day of January, in the year one thousand eight hundred and eighty-eight, before me, E. W. Westgate, a Notary Public in and for the said County of Solano, residing therein, duly commissioned and sworn, personally appeared Peter Cook, known to me to be the same person described in, whose name is subscribed to, and who executed the within instrument, and who acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the town of Rio Vista, County of Solano, the day and year in this certificate first above written.

(Notarial seal)

E. W. WESTGATE,

Notary Public.

[Endorsed]: Peter Cook to Alexander Cook, deed, dated November 17th, 1887. Recorded at the request of W., F. & Co. Feb. 4, 1888, at 21 min. past 9 a. m., in Book 379, Page 94 of Deeds, Los Angeles County Records. Frank A. Gibson, County Recorder, by Arthur Bray, Deputy. Fees, \$1.10 due. Folio 5.

(Marked "Defendants' Exhibit before the Special Examiner, No. 7, Stephen Potter, Special Examiner.")

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true, and correct copy thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, Sept. 9th, 1893.

Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER.
(No. 8.)

DEED NO. 5878.

TO ALL TO WHOM THESE PRESENTS SHALL COME:

The Southern Pacific Railroad Company, a corporation duly incorporated and organized under the laws of the State of California, and D. O. Mills and Gerrit L. Lansing, Trustees, of all the lands of the said Southern Pacific Railroad Company lying in the State of California which remain unsold on the first day of April, A. D. 1875, send greeting:

WHEREAS, on the first day of April, A. D. 1875, the said Southern Pacific Railroad Company conveyed all its lands lying in the State of California then unsold, of which the lands hereinafter described were and are a part, to D. O. Mills and Lloyd Tevis, to hold in trust as security for the payment of forty-eight thousand bonds, forty-four thousand thereof for the sum of one thousand dollars each, and four thousand thereof for the sum of five hundred dollars each, issued and to be issued by the Southern Pacific Railroad Company

in seven series, to be designated by the letters of the alphabet, commencing with the letter A, and followed by the succeeding letters in regular order to and including the letter G; Series A to consist of thirteen thousand bonds for one thousand dollars each, numbered from one to thirteen thousand, both inclusive, and four thousand bonds for five hundred dollars each, numbered from thirteen thousand and one to seventeen thousand, both inclusive; Series B to F, both inclusive, to consist of five thousand bonds each for one thousand dollars each, numbered from seventeen thousand and one to forty-two thousand, both inclusive; Series G to consist of six thousand bonds for one thousand dollars each, numbered from forty-two thousand and one to forty-eight thousand, both inclusive; all of said bonds payable thirty years after date, with interest at the rate of six per centum per annum, payable semi-annually, said Series A to bear date April first, eighteen hundred and seventy-five, and the said several succeeding series to bear such dates, respectively, as the Board of Directors of said Southern Pacific Railroad Company may direct; all of said bonds aggregating the sum of forty-six millions of dollars.

AND, WHEREAS, said Deed of Trust, among other matters, provided that the said Southern Pacific Railroad Company should have the sole and exclusive control and management of said lands, with full power to make sales of the same upon such terms and conditions as might, from time to time, be agreed upon between the said Railroad Company and the said Trustees; and that when such sales had been

made, and the purchase money fully paid, the said company and the said Trustees should unite in a conveyance in fee simple of the lands so sold to the purchaser or purchasers thereof, which conveyance should absolutely and forever release the lands so conveyed from any and all lien or incumbrance for or on account of said bonds, or any other debt or obligation of the said Railroad Company;

AND WHEREAS, on the 24th day of March, 1883, Lloyd Tevis, one of the Trustees, did resign his trust under said conveyance of the first of April, 1875; and whereas, on the 3rd day of April, 1883, the said D. O. Mills, the remaining Trustee under said conveyance, did, pursuant to the terms of his trust, nominate Gerrit L. Lansing, of the City of San Francisco and State of California, to fill the vacancy caused by the resignation of said Lloyd Tevis;

AND WHEREAS, on the 17th day of April, 1883, the Board of Directors of the said Southern Pacific Railroad Company, pursuant to the terms of said trust, did ratify and approve said nomination, and did appoint said Gerrit L. Lansing to fill said vacancy; and whereas, on the 18th day of April, 1883, the said Gerrit L. Lansing did formally accept the position of Trustee under said Deed of Trust;

AND WHEREAS, said Deed of Trust further provided that, for the sake of convenience in making said conveyances, the said Trustees should have power to act by attorney, duly nominated and appointed by them jointly by letter of attorney, which should be duly acknowledged and recorded in each and all of the counties in which said lands, or any part thereof, are

situated, and that all deeds made in their names by such attorney should have the same force and effect as if made by them in person;

AND WHEREAS, on the 21st day of April, 1883, said Trustees, D. O. Mills and Gerrit L. Lansing, acting under the power so vested in them, did nominate, constitute and appoint, by letter of attorney duly acknowledged and recorded as aforesaid, Jerome Madden, of the City and County of San Francisco and State of California, their true and lawful attorney, in their names, place and stead, to make, execute and deliver all conveyances required of them, as aforesaid.

AND, WHEREAS, the said Railroad Company has sold the lands hereinafter described, pursuant to the foregoing conditions, to Ira H. Bradshaw, of the City and County of San Francisco, in the State of California, for the sum of four hundred (\$400.00) 00.100 dollars, which sum has been by him fully paid to the said D. O. Mills and Gerrit L. Lansing, Trustees, as aforesaid.

NOW, THEREFORE, in consideration of the premises, and the said sum of four hundred (\$400.00) 00-100 dollars the receipt whereof is hereby acknowledged, the said Southern Pacific Railroad Company, and the said D. O. Mills and Gerrit L. Lansing, Trustees, as aforesaid, do grant, bargain, sell and convey to the said Ira H. Bradshaw, and his heirs and assigns, the following described tract of land situate, lying and being in the County of Los Angeles, and State of California, to-wit: The northeast quarter (N.E. $\frac{1}{4}$) of Section Fifteen (15), in Township Five (5), north of Range Eleven (11) West, San Bernardino Base and Meridian, containing one hundred and sixty (160) 00.100 acres,

according to the United States surveys, together with all the privileges and appurtenances thereunto appertaining and belonging, reserving all claim of the United States to the same as mineral land.

To HAVE AND TO HOLD the aforesaid premises, to the said Ira H. Bradshaw, his heirs and assigns, to his and their use and behoof forever.

IN TESTIMONY WHEREOF, the said Southern Pacific Railroad Company has caused these presents to be signed by its Vice-President and Secretary pro tem., and sealed with its corporate seal; and the said D. O. Mills and Gerrit L. Lansing, Trustees, by their said attorney, Jerome Madden, have subscribed their names and affixed their seals, this twenty-ninth (29th) day of September, A. D. 1887.

(Seal of the Southern Pacific Railroad Company.)	CHAS. F. CROCKER, Vice-Pres. S. P. R. R. Co. FREDK. MADGE, Sec. S. P. R. R. Co. pro tem.
D. O. MILLS, GERRIT L. LANSING,	(Seal) } Trustees.
By JEROME MADDEN, Their joint Attorney-in-fact.	

STATE OF CALIFORNIA, }
City and County of San Francisco. } ss.

On this 29th day of September, in the year one thousand eight hundred and eighty-seven, before me, E. B. Ryan, a Notary Public in and for the said City and County of San Francisco, State of California, personally appeared Charles F. Crocker, known to me to

be the Vice-President, and Fredk. Madge, known to me to be the Secretary pro tem. of the corporation that executed the within instrument; and each of them acknowledged to me that such corporation executed the same; also on this, the day aforesaid, before me, the Notary Public aforesaid, personally appeared Jerome Madden, known to me to be the person whose name is subscribed to the within instrument, as the attorney-in-fact of D. O. Mills and Gerrit L. Lansing, and acknowledged to me that he subscribed the names of the said D. O. Mills and Gerrit L. Lansing thereto as principals, and his own name as attorney-in-fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office, in the City and County of San Francisco, State of California, on the day and year above written.

E. B. RYAN,

Notary Public in and for the City and County
(Seal) of San Francisco and State of California.

[Endorsed]: Deed No. 5,878. Southern Pacific Railroad Co., D. O. Mills and Gerrit L. Lansing, Trustees, to Ira H. Bradshaw. Deed. Dated Sept. 29th, 1887. Recorded at request of W. F. & Co., Oct. 20, 1887, at 1 min. past 10 A. M., in Book 342, page 15 of Deeds, Los Angeles County Records. Frank A. Gibson, County Recorder. By Arthur Bray, Deputy. Fees, \$2.50, due. Folios 14.

(Marked "Defendants' Exhibit before the Special Examiner, No. 8, Stephen Potter, Special Examiner."

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true, and correct copy thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, Sept 9th, 1893.

[Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER.
(No. 9.)

PATENT NO. 1 (BRANCH LINE) SOUTHERN PACIFIC RAIL-
ROAD COMPANY OF CALIFORNIA.

The United States of America.

TO ALL TO WHOM THESE PRESENTS SHALL COME,
GREETING:

WHEREAS, By the Act of Congress approved July 27th, 1866, and "Joint Resolution" of June 28th, 1870, "to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast, and to secure to the Government the use of the same for postal, military and other purposes," authority is given to the Southern Pacific Railroad Company of California, a corporation existing under the laws of the State, to construct a railroad and telegraph line, under certain conditions and stipulations expressed in said Act, from the City of San Francisco to a point of connection with the Atlantic and Pacific Railroad, near the boundary line of said State, and provision is made for granting to the said

company "every alternate section of public land designated by odd numbers, to the amount of twenty alternate sections per mile on each side of said railroad on the line thereof, and within the limits of twenty miles on each side of said road, not sold, reserved or otherwise disposed of by the United States, and to which pre-emption or homestead claim may not have attached at the time the line of said road is definitely fixed."

AND WHEREAS, it is further provided by said act, that, "whenever, prior to said time any of said sections or parts of sections shall have been granted, sold, reserved or occupied by homestead settlers, or preempted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof under the direction of the Secretary of the Interior in alternate sections and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections and not included in the reserved numbers;"

AND WHEREAS, it is further enacted by the 23d Section of the Act of March 3d, 1871, "for the purpose of connecting the Texas Pacific Railroad with the City of San Francisco, the Southern Pacific Railroad Company of California is authorized to construct a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, with the same rights, grants, and privileges, and subject to the same limitations, restrictions and conditions as were granted to said Southern Pacific Railroad Company of California," by the aforesaid Act of July 27th, 1866;

AND WHEREAS, official statements bearing dates May 11th, 1874, and November 13th, 1875, from the

Secretary of the Interior, have been filed in the General Land Office, showing that the Commissioners appointed by the President under the provisions of the fourth section of the said Act of July 27th, 1866, have reported to him that the line of said branch railroad and telegraph, from a point in the northwest quarter of Section Three (3), Township Two (2) North, Range Fifteen (15) West, San Bernardino Base and Meridian, to a point in the southwest quarter of Section Four (4), Township Three (3) South, Range One (1) West, at San Gorgonio Pass, making one hundred miles of road constructed and fully completed and equipped in the manner prescribed by the said Act of July 27th, 1866;

AND WHEREAS, it is further shown that copies of the reports of said Commissioners have been filed in the Department of the Interior, with copies of the order of the President of the United States, dated May 9, 1874, and November 8, 1875, of the completion of the above portion of said railroad and telegraph line.

AND WHEREAS, certain contracts have been selected under the said Act of March 3d, 1871, by Benjamin B. Redding, Land Agent of the said Southern Pacific Railroad Company, as shown by his original lists of selections, dated January 20th, 1876, and certified January 28th, 1876, by the Register and Receiver at Los Angeles, California. The said tracts being described as follows, to wit:

North of Base Line and west of San Bernardino Meridian, Los Angeles District.

Township Four, Range Thirteen—All of Section One, containing six hundred and thirty-two acres and sixty hundredths of an acre; northwest quarter of

southwest quarter, and southwest quarter of southeast quarter of Section Eleven, containing eighty acres; east half of Section Thirteen, containing three hundred and twenty acres; south half of northeast quarter of Section Fifteen, containing eighty acres.

Township Five, Range Twelve—Southwest fractional quarter of Section Thirty-one, containing one hundred and sixty-four acres and forty-one-hundredths of an acre.

Township Five, Range Thirteen—South half of Section Twenty-five, containing three hundred and twenty acres; all of Section Thirty-five, containing six hundred and forty acres.

North of Base Line and west of San Bernardino Meridian. Indemnity, thirty miles limits.

Township Four, Range Seven—South half of Section Three, containing three hundred and twenty acres; all of Section Five, containing six hundred and forty-one acres and ninety-six-hundredths of an acre; all of Section Seven, containing six hundred and eighteen acres and twenty-eight-hundredths of an acre; all of Section Nine, containing six hundred and forty acres; all of Section Eleven, containing six hundred and forty acres; all of Section Fifteen, containing six hundred and forty acres; all of Section Seventeen, containing six hundred and forty acres; north half of Section Nineteen, containing three hundred and ten acres and twenty-eight hundredths of an acre; all of Section Twenty-one, containing six hundred and forty acres; northwest quarter of Section Twenty-seven, containing one hundred and sixty acres.

Township Four, Range Eight—All of Section One, containing six hundred and thirty acres and fifty-six

hundredths of an acre; all of Section Three, containing six hundred and thirty-seven acres and seventy-two-hundredths of an acre; all of Section Five, containing six hundred and forty-six acres and eighty-eight-hundredths of an acre; northwest quarter of Section Seven, containing one hundred and sixty-two acres; northeast quarter of Section Nine, containing one hundred and sixty acres; all of Section Eleven, containing six hundred and forty acres; all of Section Thirteen, containing six hundred and forty acres.

Township Four, Range Nine—Northwest quarter of Section Three, containing one hundred and sixty acres; all of Section Five, containing six hundred and forty-six acres and forty-six-hundredths of an acre; north half of Section Seven, containing three hundred and twenty-four acres and forty-hundredths of an acre; north half of Section Nine, containing three hundred and twenty acres.

Township Four, Range Ten—North half of southwest quarter, and north half of Section One, containing four hundred and one acres and eighty hundredths of an acre; northeast quarter of Section Three, containing one hundred and sixty-three acres and thirty-six hundredths of an acre; west half of Section Eleven, containing three hundred and twenty acres.

Township Five, Range Nine—All of Section Twenty-five, containing six hundred and forty acres; south half of Section Twenty-seven, containing three hundred and twenty acres; south half of Section Twenty-nine, containing three hundred and twenty acres; north half of southwest quarter, north half of south-

east quarter, and north half of Section Thirty-one, containing four hundred and seventy-five acres and sixty-eight hundredths of an acre; all of Section Thirty-three, containing six hundred and forty acres; all of Section Thirty-five, containing six hundred and forty acres.

Township Five, Range Ten—Southwest quarter of Section Seventeen, containing one hundred and sixty acres; all of Section Nineteen, containing six hundred and seventeen acres and eighty-four hundredths of an acre; all of Section Twenty-one, containing six hundred and forty acres; south half of Section Twenty-Three, containing three hundred and twenty acres; south half of Section Twenty-five, containing three hundred and twenty acres; all of Section Twenty-seven, containing six hundred and forty acres; northeast quarter of Section Twenty-nine, containing one hundred and sixty acres; northeast quarter of Section Thirty-three, containing one hundred and sixty acres; all of Section Thirty-five, containing six hundred and forty acres.

Township Five, Range Eleven—Southwest quarter of Section Three, containing one hundred and sixty acres; all of Section Five, containing six hundred and seventy-nine acres and forty hundredths of an acre; all of Section Seven, containing six hundred and fourteen acres and eighty-eight hundredths of an acre; all of Section Nine, containing six hundred and forty acres; west half of Section Eleven, containing three hundred and twenty acres; all of Section Thirteen, containing six hundred and forty acres; all of Section Fifteen, containing six hundred and forty acres; all of Section

Seventeen, containing six hundred and forty acres; northwest quarter of Section Nineteen, containing one hundred and forty-nine acres and seventy-two hundredths of an acre; northeast quarter of Section Twenty-one, containing one hundred and sixty acres.

Township Five, Range Twelve—All of Section One, containing eight hundred and forty-one acres and fifty-four hundredths of an acre; all of Section Three, containing eight hundred and fifty acres and twenty-eight hundredths of an acre; all of Section Eleven, containing six hundred and forty acres; all of Section Thirteen, containing six hundred and forty acres; southeast quarter of Section Fifteen, containing one hundred and sixty acres; east half and southwest quarter of Section Nineteen, containing four hundred and eighty-one acres and ninety-two hundredths of an acre; northwest quarter of Section Twenty-three, containing one hundred and sixty acres; all of Section Twenty-seven, containing six hundred and forty acres; all of Section Twenty-nine, containing six hundred and forty acres; northwestern quarter and east half of Section Thirty-one, containing four hundred and eighty-three acres and twenty-five hundredths of an acre; all of section Thirty-three, containing six hundred and forty acres.

Township Five, Range Thirteen—North half of Section Twenty-five, containing three hundred and twenty acres.

Township Six, Range Eleven—West half of Section Nineteen, containing three hundred and twenty-five acres; west half of Section Twenty-nine, containing three hundred and twenty acres; all of Section Thirty-

one, containing six hundred and forty-one acres and eighty hundredths of an acre; west half of Section Thirty-three, containing three hundred and twenty acres.

Township Six, Range Twelve—All of Section Twenty-five, containing six hundred and forty acres; south half of northwest quarter, southwest quarter, and east half of Section Thirty-five containing five hundred and sixty acres.

The said tracts as described in the foregoing pages, from one to eight inclusive, containing the aggregate area of forty-one thousand one hundred and seventy-eight acres and twenty-three-hundredths of an acre (41,178 23-100.)

NOW, KNOW YE, that the United States of America, in consideration of the premises, and pursuant to the said Acts of Congress, have given and granted, and by these presents do give and grant, unto the said Southern Pacific Railroad Company of California, and to its successors and assigns, the tracts of land above described, mineral land excepted.

TO HAVE AND TO HOLD the same, together with all rights, privileges, immunities and appurtenances of whatever nature thereunto belonging, unto the said Southern Pacific Railroad Company of California, and to its successors and assigns forever.

IN TESTIMONY WHEREOF, I, Ulysses S. Grant, President of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington, this twenty-ninth day of March, in the year of our

Lord one thousand eight hundred and seventy-six, and of the Independence of the United States the one hundredth.

By the President.

(Seal)

U. S. GRANT,

By D. D. Cone, Secretary,

C. W. HOLCOMB,

Recorder of the General Land Office.

Recorded in Vol. 5, pages 409 to 417 inclusive.

[Endorsed]: Recorded at request of Jerome Madden, Land Agent of the Southern Pacific Railroad Company, December 13th, 1880, at 20 min. past 11 A. M., in Book 2 of Patents, on page 563 et seq., in the Recorder's office of Los Angeles county, Cal. Chas. C. Lamb, County Recorder. By C. H. Dunsmoor, Deputy. Fees, \$8.70.

[Endorsed]: Recorded at request of Wells, Fargo & Co., March 25th, 1881, at 45 min. past 10 o'clock A. M., in Book A of Patents, on page 444 et seq., Records of San Bernardino county, Cal. A. F. McKenney, County Recorder. By S. M. Wall, Deputy. Fees, 8.75.

(Stamped) Received Apr. 14, 1876.

Answered

(Written in red ink upon the title page) Meh. 13, 1878. Exd. with List & Tract Book. Areas of Lands Patented herein .41 178.23 acres (Correct)

Marked "Defendants' Exhibit before the Special Examiner No. 9, Stephen Potter, Special Examiner."

I hereby certify that I have compared the foregoing document with the original on file in the office of the Southern Pacific Railroad Company, and find it to be a full, true and correct copy thereof, so far as it involves the lands in suit, and omitting the descriptions of lands that are not in issue.

STEPHEN POTTER,

Special Examiner.

San Francisco, October 13th, 1893.

[Endorsed]: United States vs. S. P. R. R. Co. et al.
No. 184. Filed Dec. 5, 1893. Wm. M. Van Dyke,
Clerk.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER.
(No. 10.)

PATENT NO. 2 OF THE BRANCH LINE OF THE SOUTHERN
PACIFIC RAILROAD COMPANY.

The United States of America.

To All to Whom These Presents Shall Come,
GREETING:

WHEREAS, by the Act of Congress approved July 27, 1866, and "Joint Resolution" of June 28, 1870, "to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas, to the Pacific Coast, and to secure to the Government the use of the same for postal, military and other purposes," authority is given to the Southern Pacific Railroad Company of California, a corporation existing under the laws of the State, to construct a railroad and telegraph line under certain conditions and stipulations expressed in said Act, from the City of San Francisco

to a point of connection with the Atlantic and Pacific Railroad, near the boundary line of said State, and provision is made for granting to the said company, "Every alternate section of public land designated by odd numbers, to the amount of twenty alternate sections per mile on each side of said railroad, on the line thereof, and within the limits of twenty miles on each side of said road not sold, reserved, or otherwise disposed of by the United States, and to which pre-emption or homestead claim may not have attached at the time the line of said road is definitely fixed."

AND WHEREAS, it is further enacted by the 23d Section of the Act of March 3, 1871: "for the purpose of connecting the Texas Pacific Railroad with the City of San Francisco, the Southern Pacific Railroad Company of California" is authorized "to construct a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, with the same rights, grants and privileges, and subject to the same limitations, restrictions and conditions as were granted to said Southern Pacific Railroad Company of California by the aforesaid Act of July 27, 1866."

AND WHEREAS, official statements bearing dates May 11, 1874, November 13, 1875, July 22, 1876, March 3, 1877, and January 30, 1878, from the Secretary of the Interior, have been filed in the General Land Office, showing that the Commissioners appointed by the President under the provisions of the fourth section of the said Act of July 27, 1866, have reported to him that the line of said branch railroad and telegraph, from the town of Mojave, in Township Eleven

North of Range Twelve West, San Bernardino Base and Meridian, and thence to the Fort Yuma Reservation, in the southeast quarter of Section Twenty-six, Township Sixteen South, Range Twenty-two East, same base and meridian, making three hundred and forty-six miles and ninety-six hundredths of a mile of road constructed and fully completed and equipped in the manner prescribed by the said Act of July 27, 1866.

AND WHEREAS, it is further shown, that copies of the reports of said Commissioners have been filed in the Department of the Interior with copies of the orders of the President of the United States, dated May 9th, 1874, November 8, 1875, July 2, 1876, March 2, 1877, and January 23, 1878, on the completion of the above portion of said railroad and telegraph line.

AND WHEREAS, certain tracts have been selected under the said Act of March 3, 1871, by Jerome Madden, Land Agent of the said Southern Pacific Railroad Company, as shown by his original list of selections, dated June 27, 1877, and certified July 2, 1877, by the Register and Receiver at Los Angeles, California; the said tracts being described as follows, to wit:

North of base line and west of the San Bernardino Meridian, California.

Township Two, Range Thirteen—All of Section Seventeen, containing six hundred and thirty-nine acres and ninety-eight one-hundredths of an acre; all of Section Twenty-one, containing three hundred and sixty-seven acres and sixty-eight one-hundredths of an acre; all of Section Twenty-five, containing six hundred and forty acres; the east half of the northeast quarter, and the lots numbered one, two and three of

Section Twenty-seven, containing one hundred and fifty-six acres and thirty-two one-hundredths of an acre; the north half of the northeast quarter and the lots numbered one, two, three, and four, of Section Thirty-five, containing one-hundred and eighty-one acres and fifty-one one-hundredths of an acre.

Township Two, Range Fourteen.—The lots numbered one, two, three, and four, the south half of the southeast quarter and the south half of the southwest quarter of Section Twenty-one, containing two hundred and sixty-one acres and sixty-eight one-hundredths of an acre; the lots numbered one and two, and the northwest quarter of the southwest quarter of Section Twenty-seven, containing one-hundred and nineteen acres and ninety-four one-hundredths of an acre; the east half of the northeast quarter and the lots numbered one, two, three, and four, of Section Twenty-nine, containing one-hundred and sixty-six acres and forty-eight one-hundredths of an acre; all of Section Thirty-three, containing six hundred and forty acres.

Township Two, Range Fifteen.—The lots numbered one, two, three, four, five, and six, of Section One, containing two hundred and thirty acres and nine one-hundredths of an acre.

The said tracts of land as described in the foregoing pages from 2 to 14, inclusive, make in the aggregate the area of (54,315.42) fifty-four thousand three hundred and fifteen acres and forty-two one hundredths of an acre.

Now, KNOW YE, that the United States of America, in consideration of the premises and pursuant to the said Acts of Congress, have given and granted, and by

these presents do give and grant, unto the said Southern Pacific Railroad Company of California, and to its successors and assigns the tracts of land above described, "mineral land" excepted.

To HAVE AND TO HOLD the same, together with all rights, privileges, immunities and appurtenances of whatever nature thereunto belonging, unto the said Southern Pacific Railroad Company of California, and to its successors and assigns forever.

IN TESTIMONY WHEREOF, I, Rutherford B. Hayes, President of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

(Seal) Given under my hand at the City of Washington, this fourth day of April, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the United States the one hundred and third.

By the President.

R. B. HAYES.

By Wm. H. Cook, Secretary.

S. W. CLARK,

Recorder of the General Land Office.

Recorded in Vol. 7, pages 86 to 97, inclusive.

[Endorsed:] Recorded at request of C. Cabot, Feby. 12, 1881, at 45 min. past 3 p. m., in Book 2 of Patents, page 574. Records Los Angeles County. Chas. C. Lamb, County Recorder. By A. N. Hamilton, Dept. \$12.70 Paid.

[Endorsed:] Recorded at request of C. Cabot, Feby. 18th, 1881, at 50 min. past 10 o'clock, a. m. in Book A of Patents, page 412, et seq., Records San Bernardino County, State of California. A. F. McKenney, Co. Recorder. By S. M. Wall, Deputy. Fees \$12.75.

[Endorsed:] Recorded at the request of C. Cabot, February 13th, 1881, at 45 min. past 9 o'clock, a. m., in Book 2 of Patents, page 151, Records of San Diego County. Gilbert Dennis, County Recorder. Fees \$12.75. (Stamped.) Received Apr. 17, 1879. Answered.....

Marked "Defendants' Exhibit before the Special Examiner, No. 10. Stephen Potter, Special Examiner."

I hereby certify that I have compared the foregoing document with the original on file in the office of the Southern Pacific Railroad Company, and find it to be a full, true, and correct copy thereof, so far as it involved the lands in suit, and omitting the descriptions of the lands that are not in issue.

STEPHEN POTTER,
Special Examiner.

San Francisco, October 13th, 1893.

[Endorsed:] United States vs. S. P. R. R. Co. et al. No. 184. Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER.
(No. 14.)PATENT NO. 6 OF LANDS GRANTED IN CALIFORNIA TO
THE SOUTHERN PACIFIC RAILROAD COMPANY,
ACT OF MARCH 3, 1871.

The United States of America.

TO ALL TO WHOM THESE PRESENTS SHALL COME,
GREETING:

WHEREAS, by the Act of Congress approved July 27, 1866, and Joint Resolution of June 28, 1870, "to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," and to secure to the Government the use of the same for postal, military and other purposes, authority is given to the Southern Pacific Railroad Company of California, a corporation existing under the laws of the State to construct a railroad and telegraph line, under certain conditions and stipulations expressed in said Act from the City of San Francisco to a point of connection with the Atlantic and Pacific Railroad, near the boundary line of said State, and provision is made for granting to the said company "every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the Territories of the United States; and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever, on the line thereof, the United States have full title, not reserved, sold, granted, or otherwise appropriated, and

free from pre-emption or other claims, at the time the line of said road is designated by a plat thereof, filed in the office of the Commissioner of the General Land Office."

AND WHEREAS, it is further enacted by the 23d Section of the Act of March 3, 1871, "for the purpose of connecting the Texas Pacific Railroad with the City of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California), to construct a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, with the same rights, grants, and privileges, and subject to the same limitations, restrictions and conditions as were granted to said Southern Pacific Railroad Company of California," by the aforesaid Act of July 27, 1866.

AND WHEREAS, official statements bearing dates May 11, 1874, November 13, 1875, July 22, 1876, March 3, 1877 and January 30, 1878, from the Secretary of the Interior, have been filed in the General Land Office, showing that the Commissioners appointed by the President under the provisions of the 4th Section of the said Act of July 27, 1866, have reported to him that the line of said branch railroad and telegraph from the town of Mojave, in Township Eleven North, of Range Twelve West, San Bernardino Base and Meridian, and thence to the Fort Yuma Reservation, in the southeast quarter of Section Twenty-six, Township Sixteen South, Range Twenty-two East, same base and meridian, making three hundred and forty-six miles and ninety-six one-hun-

dredths of a mile of road, has been constructed and fully completed and equipped in the manner prescribed by the said Act of July 27, 1866.

AND WHEREAS, it is further shown that copies of the report of said Commissioners have been filed in the Department of the Interior, with copies of the orders of the President of the United States, dated May 9, 1874, November 8, 1875, July 2, 1876, March 2, 1877, and January 23, 1878, of the completion of the above portion of said railroad and telegraph line.

AND WHEREAS, certain tracts have been selected, under the act aforesaid, by Jerome Madden, the duly authorized Land Agent of the Southern Pacific Railroad Company, as shown by his original lists of selections, dated July 12, 1882, and May 14, 1883, and certified July 14, 1882, March 9 and May 25, 1883, by the Register and Receiver at Los Angeles District, California. The said tracts of land lie eoterminous to the constructed line of road, and are particularly described as follows, to-wit:

North of base line and west of San Bernardino principal meridian, California.

Township Two, Range Twelve—The lots numbered one, two, the east half of the southwest quarter, and the southeast quarter of Section Thirty-one, containing three hundred and twenty-one acres.

Township Three, Range Fifteen—All of Section Twenty-one, containing five hundred and ninety-eight acres and seventy six one-hundredths of an acre.

North of base line and west of San Bernardino principal meridian, California.

Township Four, Range Eighteen—The northeast quarter, the Lot numbered Three, and the southeast

quarter of the northwest quarter of Section Nineteen, containing two hundred and thirty-nine acres and seventy-seven one-hundredths of an acre; the northeast quarter of the northeast quarter, the south half of the northeast quarter, the Lot numbered One, and the fractional south half of Section Thirty-one, containing four hundred and eighty acres and eleven one-hundredths of an acre.

The said tracts of land as described in the foregoing make the aggregate area of (37,069.97) thirty-seven thousand sixty-nine acres and ninety-seven one-hundredths of an acre.

NOW, KNOW YE, that the United States of America, in consideration of the premises and pursuant to the said Acts of Congress, have given and granted, and by these presents do give and grant, unto the said Southern Pacific Railroad Company of California, and to its successors and assigns, the tracts of land selected as aforesaid and described in the foregoing; yet excluding and excepting "all mineral lands," should any such be found in the tracts aforesaid, but this exclusion and exception according to the terms of the statute, "shall not be construed to include coal and iron lands."

TO HAVE AND TO HOLD the same, together with all rights, privileges, immunities and appurtenances of whatever nature thereunto belonging, unto the said Southern Pacific Railroad Company of California, and to its successors and assigns forever.

IN TESTIMONY WHEREOF, I, Chester A. Arthur, President of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington,
this twenty-seventh day of December, in the year of
Lord one thousand eight hundred and eighty-three,
and of the Independence of the United States the one
hundred and eighth.

By the President,

(Seal)

CHESTER A. ARTHUR.

Wm. H. CROOK, Secretary.

S. W. CLARK,

Recorder of the General Land Office.

[Endorsed]: \$10. Recorded at the request of Wells,
Fargo & Co., March 11th, A. D. 1884, at 45 min. past 2
p. m., in Book 1 of Patents, page 257, et seq., Records
of Ventura Co., Cal. John T. Stow, Recorder. By L.
H. Warring, Deputy.

[Endorsed]: Received for Record March 4, 1884, at
12 o'clock m. at request of Wells, Fargo & Co., and re-
corded in Book No. 3 of Patents, Records, San Diego
Co., page 115, et seq., Mch 6, 1884, at ten o'clock and
15 min. A. m. E. G. Haight, County Recorder. By H.
T. Christian, Deputy. \$9.75.

[Endorsed]: Recorded at the request of Wells,
Fargo & Co., Feby. 13th, A. D. 1884, at 8:45 A. m., Book
"B" of Land Patents, pages 322, et seq. W. F. Hol-
comb, County Recorder, San Bernardino Co. By E.
A. Nisbet, Deputy. \$8.35.

[Endorsed]: No. 39. Recorded at request of Wells,
Fargo & Co., Apr. 7th, 1890, at 45 min. past 3 p. m., in
Book "C" of Patents, page 446, et seq. Records, San
Bernardino County. A. S. Davidson, County Re-
corder.

(Error.) No. Fee. Re-recorded to correct error in former record.

[Endorsed]: Recorded at request of C. Cabot, Feby. 9, 1884, at 5 min. past 4 p. m., in Book 3 of Patents, page 328, et seq. Records Los Angeles County. Chas. E. Miles, County Recorder, by W. B. Prichard, Deputy. 9.30 Pd.

[Endorsed]: Filed April 25, 1888. Chas. H. Duns-moor, Clerk, by A. N. Hamilton, Deputy. (Stamped) Land Dep't S. P. R. R. Received Jan. 22, 1884. Answered 188 Book , page

(Marked "Defendants' Exhibit before the Special Examiner, No. 14, Stephen Potter, Special Examiner.")

I hereby certify that I have compared the foregoing document with the original on file in the office of the Southern Pacific Railroad Company, and find it to be a full, true and correct copy thereof, so far as it involves the lands in suit, and omitting the descriptions of lands that are not in issue.

STEPHEN POTTER,
Special Examiner.

San Francisco, October 13th, 1893.

[Endorsed]: United States vs. S. P. R. R. Co. et al. No. 184. Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

(Exhibits Nos. 15, 16 and 17 withdrawn. (See pp. 103 and 244, record.)

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER.
(No. 18.)

PATENT NO. 9, OF LANDS GRANTED BY THE ACT OF
MARCH 3, 1871, TO THE SOUTHERN PACIFIC RAIL-
ROAD COMPANY, LOS ANGELES DISTRICT, CALIFORNIA.

The United States of America.

To ALL TO WHOM THESE PRESENTS SHALL COME,
GREETING:

WHEREAS, by the Act of Congress approved July 27, 1886, and Joint Resolution of June 28, 1870, "To aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," and to secure to the Government the use of the same for postal, military and other purposes, authority is given to the Southern Pacific Railroad Company of California, a corporation existing under the laws of the State, to construct a railroad and telegraph line, under certain conditions and stipulations expressed in said Act, from the City of San Francisco to a point of connection with the Atlantic and Pacific Railroad near the boundary line of said State, and provision is made for granting to the said company "every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever, on the line thereof, the United States have full title, not reserved, sold, granted or otherwise appropriated, and

free from pre-emption or other claims, at the time the line of said road is designated by a plat thereof, filed in the office of the Commissioner of the General Land Office.

AND WHEREAS, it is further enacted by the 23d Section of the Act of March 3, 1871, "for the purpose of connecting the Texas Pacific Railroad with the City of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, with the same rights, grants and privileges, and subject to the same limitations, restrictions and conditions as were granted to said Southern Pacific Railroad Company of California," by the aforesaid Act of July 27th, 1866.

AND WHEREAS, official statements bearing dates May 11, 1874, November 13, 1875, July 22, 1876, March 3, 1877, and January 30, 1878, from the Secretary of the Interior, have been filed in the General Land Office, showing that the Commissioners appointed by the President under the provisions of the fourth section of the said Act of July 27, 1866, have reported to him that the line of said branch railroad and telegraph from the town of Mojave, in Township Eleven North, of Range Twelve West, San Bernardino base and meridian, and thence to the Fort Yuma reservation, in the southeast quarter of Section Twenty-six, Township Sixteen South, Range Twenty-two East, same Base and Meridian, making three hundred and forty-six miles and ninety-six-one-

hundredths of a mile of road has been constructed, and fully completed and equipped in the manner prescribed by the said Act of July 27, 1866.

AND WHEREAS, it is further shown that copies of the report of said Commissioners have been filed in the Department of the Interior, with copies of the orders of the President of the United States, dated May 9, 1874, November 8, 1875, July 2, 1876, March 2, 1877, and January 23, 1878, of the completion of the above portion of said railroad and telegraph line.

AND WHEREAS, certain tracts have been selected under the Act aforesaid, by Jerome Madden, the duly authorized Land Agent of the Southern Pacific Railroad Company, as shown by his original lists of selections, dated June 27, 1877, May 14, 1883, April 7, May 17, and June 27, 1884, and certified July 2, 1877, May 25, 1883, and April 16, May 23, and July 19, 1884, by the Register and Receiver at Los Angeles, California. The said tracts of land lie coterminous to the constructed line of road and particularly described as follows; to-wit:

North of base line and west of San Bernardino, principal meridian, California.

Township Six, Range Twelve—The southwest quarter, and the south half of the southeast quarter of Section Twenty-nine, containing two hundred and forty acres; all of Section Thirty-one, containing six hundred and forty acres.

Township Six, Range Thirteen—All of Section One, containing six hundred and forty acres; all of Section

Three, containing six hundred and forty acres; all of Section Seven, containing six hundred and forty acres and eighty-one-hundredths of an acre; all of Section Eleven, containing six hundred and forty acres; the south half of Section Fifteen, containing three hundred and twenty acres; the northwest quarter, the west half of the southwest quarter, and the east half of the southeast quarter of Section Seventeen, containing three hundred and twenty acres; all of Section Twenty-one, containing six hundred and forty acres; all of Section Twenty-three, containing six hundred and forty acres; all of Section Twenty-five, containing six hundred and forty acres.

Township Six, Range Fourteen—All of Section One, containing six hundred and forty acres; the northeast quarter of Section Eleven, containing one hundred and sixty acres; the north half of Section Thirteen, containing three hundred and twenty acres.

Township Seven, Range Twelve—All of Section Fifteen, containing six hundred and forty acres; all of Section Twenty-one, containing six hundred and forty acres; all of Section Twenty-seven, containing six hundred and forty acres; all of Section Thirty-one, containing six hundred and forty-two acres and forty-one-hundredths of an acre.

Township Seven, Range Thirteen—All of Section Seven, containing six hundred and thirty-six acres; all of Section Fifteen, containing six hundred and forty acres; all of Section Seventeen, containing six hundred and forty acres; all of Section Nineteen, containing six hundred and thirty-six acres, and six one-hundredths of an acre; all of Section Twenty-one, con-

taining six hundred and forty acres; all of Section Twenty-three, containing six hundred and forty acres; all of Section Twenty-seven, containing six hundred and forty acres; all of Section Twenty-nine, containing six hundred and forty acres; all of Section Thirty-one, containing six hundred and thirty-nine acres; all of section Thirty-three, containing six hundred and forty acres; all of Section Thirty-five, containing six hundred and forty acres.

Township Seven, Range Fourteen—(The northwest quarter), the Lot numbered One of the southwest quarter, the north half of the Lot numbered Two of the southwest quarter, and the east half of Section Seven, containing six hundred acres; all of Section Nine, containing six hundred and forty acres; all of Section Eleven, containing six hundred and forty acres; all of Section Thirteen, containing six hundred and forty acres; all of Section Fifteen, containing six hundred and forty acres; all of Section Twenty-one, containing six hundred and forty acres; all of Section Twenty-three, containing six hundred and forty acres; all of Section Twenty-five, containing six hundred and forty acres; all of Section Twenty-seven, containing six hundred and forty acres; the south half of the southwest quarter, the northeast quarter of the southwest quarter, and the southwest quarter of the southeast quarter of Section Thirty-three, containing one hundred and sixty acres.

Township Seven, Range Fifteen—The north half of Section Thirteen, containing three hundred and twenty acres.

The said tracts of land, as described in the foregoing, make the aggregate area of (33,246.21) thirty-

three thousand two hundred and forty-six acres, and twenty-one one-hundredths of an acre.

Now KNOW YE, that the United States of America, in consideration of the premises, and pursuant to the said Acts of Congress, have given and granted, and by these presents do give and grant, unto the said Southern Pacific Railroad Company, of California, and to its successors and assigns, the tracts of land selected as aforesaid and described in the foregoing; yet excluding and excepting, "all mineral land," should any such be found in the tracts aforesaid, but this exclusion and exception according to the terms of the statute, "shall not be construed to include coal and iron lands."

TO HAVE AND TO HOLD the same, together with all rights, privileges, immunities and appurtenances of whatever nature thereunto belonging unto the said Southern Pacific Railroad Company of California, and to its successors and assigns forever.

IN TESTIMONY WHEREOF, I, Chester A. Arthur, President of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington, this ninth day of January in the year of our Lord one thousand eight hundred
(Seal) and eighty-five, and of the Independence of the United States the one hundred and ninth.

By the President, CHESTER A. ARTHUR.

M. McKEAN, Secretary.

S. W. CLARK,

Recorder of the General Land Office.

Recorded in Vol. 8, pages 413 to 419, inclusive.

[Endorsed]: Recorded at request of C. Cabot, Jany. 30th, 1885, at 10 min. past 3 p. m., in Book 3 of Patents, page 489, Records Los Angeles County. Chas. E. Miles, County Recorder. By

[Endorsed]: Recorded at request of Wells, Fargo & Co. February 5th, A. D. 1885, at 35 min. past 10 A. M. Book B of Patents, pages 388 to 396, inclusive. Legare Allen, County Recorder, San Bernardino.

[Endorsed]: Received for record Feby. 9th, 1885, at 30 min. past 9 o'clock, A. M., at request of Wells, Fargo & Co., and recorded in Book No. 3 of Patents, page 234, et seq. Feb. 26th, 1885, at 3 o'clock and ... min. P. M. S. A. McDowell, County Recorder, San Diego County. By Deputy. \$6.75. (Stamped) Land Dep't S. P. R. R. Received Jan. 23, 1885. Answered 188. Book page

Marked "Defendants' Exhibit before the Special Examiner, No. 18, Stephen Potter, Special Examiner."

I hereby certify that I have compared the foregoing document with the original on file in the office of the Southern Pacific Railroad Company, and find it to be a full, true, and correct copy thereof so far as it involves the lands in suit, and omitting the descriptions of lands that are not in issue.

STEPHEN POTTER,
Special Examiner.

San Francisco, October 13th, 1893.

[Endorsed]: United States vs. S. P. R. R. Co., et al. No. 184. Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Exhibits No. 19 to 28, inclusive, withdrawn.
(See pp. 103 and 244, record.)

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER.
(No. 29.)

Stephen Potter, Special Examiner.

UNITED STATES OF AMERICA.

(Engraving.)

Department of the Interior,
Washington, D. C., Sept. 30, 1893.

Pursuant to Section 882 of the Revised Statutes, I hereby certify that the annexed papers are true copies of the originals, and of the endorsements thereon, on file in this department.

In TESTIMONY WHEREOF, I have hereunto subscribed my name, and caused the seal of the Department of the Interior to be affixed, the day and year first above written.

Wm. H. Sims,
Acting Secretary of the Interior Department.

[Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Los Angeles, California, April 15th, 1874.

To Hon. C. Delano, Secretary of the Interior of the United States of America:

Sir—We, the undersigned, Commissioners of the United States, appointed to examine the first (1st) Section of fifty (50) miles of the railroad and tele-

graph line of the Southern Pacific Railroad Company, authorized by the Twenty-third Section of the Act of Congress, entitled "An Aet to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," approved March 3rd, 1871, commencing at a point in the northwest quarter (NW $\frac{1}{4}$) of Section Three (3), Township Two (2) North, Range Fifteen (15) West, San Bernardino Base and Meridian; running thence in a southeasterly direction to the City of Los Angeles, and thence in an easterly direction, and ending at the termination of the fiftieth (50) mile therefrom, at a point in the northeast quarter (NE $\frac{1}{4}$) of Section Twenty-seven (27), Township One (1) South, Range Nine (9) West, San Bernardino Base and Meridian.

(Note—The affidavit, Feb'y 16th, 1874, of C. P. Huntington, President of the Southern Pacific R. R. Co. of the completion, of this section of 50 miles of railroad, contains a clerical error, in that it describes incorrectly the exact quarter section of public land in which the points of commencement and termination are situated. The particular sections of land in which these points exist are given herein correctly. The difference in the description was caused by a difficulty in connecting the line of the road with the U. S. Surveys.) Certify that we have carefully examined such section, and that the alignment and grades are as represented on the accompanying map and profile, and are such as, in view of the capabilities of the ground, the Government should accept as first-class.

That in this distance, fifty (50) miles, there are:

20,141	feet of level line.
8,500	" " grades 0 to 5 feet permile.
20,500	" " " 5 to 10 " " "
17,103	" " " 10 to 15 " " "
18,900	" " " 15 to 20 " " "
11,700	" " " 20 to 25 " " "
18,690	" " " 25 to 30 " " "
22,300	" " " 30 to 35 " " "
13,944 6-10 "	" " 35 to 40 " " "
15,800	" " " 40 to 45 " " "
26,100	" " " 45 to 50 " " "
26,721 4-10 "	" " 50 to 55 " " "
20,000	" " " 55 to 60 " " "
4,400	" " " 60 to 65 " " "
13,800	" " " 65 to 70 " " "
5,400	" " " 72 23-100 " " "

Total ... 264,000 feet, or fifty (50) miles.

Maximum grade, 72 23-100 feet per mile.

That also in this distance of fifty (50) miles there are:

197,470 5-10 feet of straight line.

361 4-10 " " curve of 18 min.

17,215 " " " " 20 "

8,720 " " " " 30 "

9,680 " " " " 40 "

5,220 " " " " 50 "

10,102 " " " " 1 deg.

1,575 " " " " 1 " 20 min.

1,744 6-10 " " " " 1 " 30 "

3,872 4-10 " " " " 2 " 00 "

200	feet of curve of 3 deg. 00 min.
3,972 5-10	" " " " 4 " 00 "
400	" " " " 4 " 30 "
1,331 6-10	" " " " 5 " 00 "
2,131	" " " " 6 " 00 "

264,000 feet, or over fifty (50) miles.

Maximum radius, 955 4-10 feet.

That all the iron is of American manufacture and of the best quality, and that the road is of the gauge of four feet eight and one-half inches (4 ft. 8½ in.) that the rails weigh not less than fifty-six (56) pounds per lineal yard, and the joints are made with fish plates, and that all the rails are fastened with four spikes to each tie; that there are seven (7) sidings having an aggregate length of 12,642 feet, connected with the main track at each end with good switches; that there are two turntable tracks having an aggregate length of 546 feet, connected with the main track with good switches; that there are 2,450 ties per mile, of redwood or red cedar timber, in all cases at least 6x8 inches by 8 feet long. (The cross ties are in the aggregate over eight inches wide and make a bearing surface equal to at least 2,640 ties per mile); that the said section is ballasted with sand, gravel and loam, of which the road bed is composed, no other materials being found within many miles of the line of the railroad. When more suitable material shall be found within a reasonable distance, we have the assurance of the officers that the road will, if necessary, be reballasted.

That the excavations and embankments are in strict conformity to the requirements of law and the instructions.

That there are seventeen (17) bridges all built on pile foundations, as follows:

1 bridge 1,001 7-10 feet long, 63 spans,
15 9-10 each.

1 bridge 795 feet long, 50 spans, 15 9-10
each.

1 bridge 556 5 feet long, 35 spans, 15
9-10 each.

1 bridge 331 8-10 feet long, 21 spans, 15
8-10 each.

2 bridges 190 8-10 feet long, 12 spans, 15
9-10 each.

2 bridges 95 4-10 feet long, 6 spans, 15
9-10 each.

5 bridges 48 feet long, 3 spans, 16 each.

3	"	32	"	"	2	"	16	"
---	---	----	---	---	---	---	----	---

1	"	16	"	"	1	"	16	"
---	---	----	---	---	---	---	----	---

Total, 17 bridges.

That there are one hundred and sixteen (116) culverts, as follows:

43 culverts, 1x1 feet, box.

5	"	1x1 $\frac{1}{2}$	"	open.
---	---	-------------------	---	-------

1	"	1x1 $\frac{1}{2}$	"	box.
---	---	-------------------	---	------

2	"	1x2	"	open.
---	---	-----	---	-------

1	"	1x2	"	box.
---	---	-----	---	------

1	"	1x2 $\frac{1}{2}$	"	"
---	---	-------------------	---	---

27	"	2x2	"	"
----	---	-----	---	---

16	"	2x3	"	"
----	---	-----	---	---

4	"	3x3	"	"
---	---	-----	---	---

5	"	3x4	"	"
---	---	-----	---	---

3	culverts	4x4	feet,	box.
1	"	4x6	"	"
5	"	6x6	"	"
1	"	6	"	open.
1	"	10	"	"

Total, 116 culverts.

No stone suitable for building purposes could be found within a distance of ten (10) miles of the railroad. The material used in the construction of the trestle bridges, culverts and bridge abutments is the most durable the country can afford, being the black or coast red wood or red cedar (the same used for ties), well known on the Pacific Coast and universally sought after on account of its great durability and resistance to decay.

We have, however, the assurances of the managers and directors that the culverts and bridge abutments will be rebuilt in stone when and as the same may become necessary, and suitable material can be found within a reasonable distance of the line of road.

No wood or coal houses have been built, and they do not seem to be necessary. A permanent arrangement has, notwithstanding, been made by the Southern Pacific Railroad Company with the Los Angeles and San Pedro Railroad Company for the full use of the fuel houses at Los Angeles owned by the latter company. They are large enough for all the fuel required at present by both roads. The dryness of the atmosphere, there being but a very light rainfall in winter with no rain in summer, and the extreme mildness of the climate render the

use of covering for fuel entirely unnecessary. If, however, other fuel houses shall be hereafter found requisite, the officers promise that they shall be built immediately.

That at San Fernando there is one passenger and freight house combined, 78x20 feet, sided with planed lumber and covered with shingles. On each side of the building there are platforms 8 feet wide.

That there is one turntable at San Fernando with 273 feet of track, connected at one end by switch with the main track.

That there is at San Fernando one water tank of 18,000 gallons capacity, supplied from a well by a Hooker pump.

That there is at San Fernando 1,046 feet of side track, connected at both ends with good switches to the main track.

There are at Sepulveda, 13 miles from San Fernando, 10 acres of land for depot purposes. The officers of the road say that whenever business shall require side tracks or buildings they will be constructed.

That there are at Los Angeles 1,125 feet of side track, connected at both ends by good switches with the main track, also, 7,550 4-10 feet of side track, connecting by good switches, the main line with the passenger and freight depots of the San Pedro and Los Angeles Railroad. Also, 220 6-10 feet of side track, connecting by good switches the main line with an engine house which the Southern Pacific Railroad Company has constructed on a 50-acre tract, provided for large engine and repair shops when they shall become necessary.

That there are 65 acres of land for depots and machine shops. A permanent arrangement has been made and perfected whereby the Southern Pacific Railroad Company has the full use of the passenger and freight depots of the San Pedro and Los Angeles Railroad Company. The road owned by this Company consists of a main line of 20 miles from Los Angeles to Wilmington, on the Pacific Ocean, and a branch line to Anaheim, 7 miles of which is constructed. It is run in connection with the section of 50 miles of railroad under examination. These passenger and freight depots are large, well built, and commodious buildings, and are much more than sufficient to give the fullest accommodations for all the travel and commerce of both roads for many years. The officers promise that if business should increase to such an extent as to require more ample accommodations other buildings will, when needed, be immediately erected on the 65 acres before mentioned.

That at San Gabriel there is one passenger and freight house combined, 40x20 feet, sided with planed lumber and covered with shingles. On each side of the buildings there are platforms 8 feet wide.

That at San Gabriel there is a side track 827 feet long, connected at both ends with good switches to the main track.

That there is at Lexington one passenger and freight house combined, 24x16 feet, sided with planed lumber and covered with shingles. On each side of the building there are platforms 8 feet wide.

That at Lexington there is a side track 827 feet long, connected at both ends with good switches to the main track.

That at Spadra there is one passenger and freight house combined, 78x20 feet, sided with planed lumber and covered with shingles. On each side of the building there are platforms 8 feet wide.

That at Spadra there is one turntable with 273 feet of side track.

That at Spadra there are 1,046 feet of side track, connected at both ends with good switches with main track.

That at Spadra there is a water tank of 18,000 gallons capacity, supplied from a well by a Hooker pump.

That there are no section houses erected, the hotel and farm houses which are found along the line of the road affording ample accommodation for all the workmen employed.

That no locomotive stall, machine or repair shops have been built, permanent arrangements have been made with the Los Angeles and San Pedro Railway Company for the use of its machine and repair shops, etc. These we deem sufficient for the work of both roads at present. We are informed by the officers of the Company that it is the intention, as soon as enough of the railroad shall be built from which to form a division of any considerable length, to construct permanent machine and repair shops in the most substantial and durable manner, and if, in the meanwhile, additional facilities should be required for repairs or otherwise, they will be supplied promptly.

The Southern Pacific Railroad Company owns the following locomotives and cars, which are now used on this portion of its line:

LOCOMOTIVES.

No.	Diam. of Wheels. ft.	Diam. of Cylinder. in.	Name of Makers.
1	4	8 17 in.	Central Pacific R. R. Co., Saera- mento, Cal.
2	5	2 14 "	McQueen, Schenectady, N. Y.
3	5	2 12 "	" " "
4	5	2 12 "	" " "
5	5	2 9 "	Vulcan Iron Works, San Fran- cisco.

CARS.

- 2 Passenger Cars.
- 2 Passenger and Caboose Cars.
- 1 Smoking Car.
- 1 Baggage and Express Car.
- 7 Box Freight Cars.
- 43 Platform Cars.
- 2 Dump Cars.
- 12 Section Cars.

Total, 70 Cars.

The above locomotives and cars are more than sufficient for present business and requirements, and no more will be needed for some considerable time to come.

The road traverses a section thinly settled by population that has hardly any commerce, and in conse-

quence business must necessarily be, for a time, very limited and unprofitable. As the road advances, it is hoped that immigration will be attracted, and the resources and commerce of the country will be developed to such an extent that when, eventually, connection shall be made with the main line from the Eastern States, there will be enough of freight and travel to establish at least a paying business.

The directors say that when and as the same shall become necessary, an ample supply of first-class rolling stock and other appurtenances will be promptly provided.

That said section of fifty (50) miles of railroad, and the telegraph line connected therewith, or any part thereof, has not been constructed "on the line of any other railroad route to aid in the construction of which lands have heretofore (prior to July 27, 1866,) been granted by the United States."

That this section of railroad and telegraph line was completed and equipped previous to the 3rd day of March, 1874, and both are first-class.

That the telegraph line is constructed as follows : Not less than 30 redwood poles to the mile; size at bottom 8x8 inches; at top 4x5 inches; length 24 feet. They are set to a depth of four feet in the ground. Number 9 galvanized wire is used. The office instruments are of the very best quality and of the most improved style, and are furnished by the best manufacturers.

We respectfully recommend the acceptance by the Government of the section of fifty (50) miles of railroad and telegraph line hereinbefore described.

We also report and certify that the deficiencies in the ballasting of the Southern Pacific Railroad which existed at the time of the several examinations of said roads by the U. S. Railroad Commission have been supplied, and that the entire line throughout is now ballasted in a first-class manner, and the roadway is in an excellent condition and repair.

Respectfully submitted,

LEWIS M. FOULKE,

CALVIN BROWN,

EUGENE L. SULLIVAN,

U. S. Railroad Commissioners.

STATE OF CALIFORNIA, { ss.
County of Los Angeles. }
Lewis M. Foulke, Calvin Brown and Eugene L. Sullivan, being duly sworn, severally, each for himself, says that he is the U. S. Railroad Commissioner, and that the matter and things set forth in the foregoing statement by him subscribed are true and correct.

LEWIS M. FOULKE,

CALVIN BROWN,

EUGENE L. SULLIVAN.

Subscribed and sworn to before me, Ygnacio Sepulvado, a judge of the District Court of the 17th judicial district of the State of California, in and for the County of Los Angeles, this 15th day of April, A. D. 1874, said court being a court of record.

YGNACIO SEPULVADA,
District Judge of the Court aforesaid.

I hereby certify that Ygnacio Sepulvada is the acting judge of said Court; that I am well acquainted with his handwriting, and that the signature to the above and foregoing affidavit is his genuine signature.

Witness my hand and the seal of said court this 15th day of April, A. D. 1874.

ANDREW W. POTTS,
County Clerk in and for said County of Los Angeles,
and ex-officio Clerk of the District Court
(Seal) of the 17th judicial district in and for said
County of Los Angeles.

Department of the Interior,
Washington, D. C., 8th May, 1874.

Sir: I have the honor to submit herewith for your action the report, dated 15th ultimo, of Messrs. Foulke, Brown & Sullivan, appointed by you to examine and report upon the Southern Pacific Railroad and Telegraph Line. They have examined the 50 miles of road, &c., commencing at a point in the NW $\frac{1}{4}$, Section 3, Township 2 N., Range 15 West, San Bernardino Base and Meridian, running thence in a south-easterly direction to the City of Los Angeles; and thence in an easterly direction to the City of Los Angeles; and thence in an easterly direction, ending at the termination of the 50th mile therefrom, at a point in the NE $\frac{1}{4}$, Section 27, Township 1 S., Range 9 W., same Base and Meridian.

The Commissioners in their report represent (with exception of a few defects, which the Company promise to remedy hereafter,) that this portion of road is

completed and equipped as a first-class railroad; and that the telegraph line is finished for the same distance, and is first-class. I therefore respectfully recommend the acceptance of the same, and the issue to said Company of patents for lands due on account of the construction thereof, agreeably to the provisions of the "Act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," approved 27 July, 1866, and the Acts amendatory thereof, approved 25 July, 1868, and 28th June, 1870.

Very respectfully, your ob't servant,

B. R. COWEN,

Acting Secretary.

To the President.

[Endorsed]: Department of the Interior, 8th May, 1874. B. R. Cowen, Acting Secretary, submits to the President report of Commissioners on 1st section of fifty miles of Southern Pacific R. R. Executive Mansion, May 9th, 1874. The within recommendations are approved. U. S. Grant.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER.
(No. 30.)

Stephen Potter, Special Examiner.

UNITED STATES OF AMERICA.

(Engraving.)

Department of the Interior,

Washington, D. C., Sept. 30, 1893.

Pursuant to Section 882 of the Revised Statutes, I hereby certify that the annexed papers are true copies

of the originals and of an endorsement thereon, on file in this department.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name, and caused the seal of the Department of the Interior to be affixed, the day and year first above written.

(Seal.)

Wm. H. Sims,

Acting Secretary of the Interior Dep.

[Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Ex. No. 30.

Los Angeles, California, October 21, 1875.

To Hon. Zachariah Chandler, Secretary of the Interior of the United States of America:

Sir—We, the undersigned Commissioners of the United States, appointed to examine the second (2) section of fifty (50) miles of the railroad and telegraph line of the Southern Pacific Railroad Company, authorized by the twenty-third section of the Act of Congress, entitled "An Act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," approved March 3d, 1871, commencing at the termination of Section Number One (1) of said railroad at a point in the northeast quarter (N.E. $\frac{1}{4}$) of Section Twenty-seven (27), Township One (1) South, Range Nine (9) West, San Bernardino Base and Meridian, and running thence in a southeasterly direction fifty (50) miles to a point in the southwest quarter (S.W. $\frac{1}{4}$) of Section Four (4), Township (3) Three South, Range One (1)

West, San Bernardino Base and Meridian, certify that we have carefully examined such section, and that the alignment and grades are as represented on the accompanying map and profile, and are such as, in view of the capabilities of the ground, the Government should accept as first-class.

That in this distance (50) miles there are:

16,700 feet of level line.

4,900 feet of grades 0 to 5 feet per mile.

30,900	"	"	"	5	"	10	"	"	"
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6,600	"	"	"	10	"	15	"	"	"
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18,500	"	"	"	15	"	20	"	"	"
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21,400	"	"	"	20	"	25	"	"	"
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10,400	"	"	"	25	"	30	"	"	"
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22,100	"	"	"	30	"	35	"	"	"
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4,000	"	"	"	35	"	40	"	"	"
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3,500	"	"	"	40	"	45	"	"	"
-------	---	---	---	----	---	----	---	---	---

10,400	"	"	"	45	"	50	"	"	"
--------	---	---	---	----	---	----	---	---	---

11,700	"	"	"	50	"	55	"	"	"
--------	---	---	---	----	---	----	---	---	---

12,600	"	"	"	55	"	60	"	"	"
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13,200	"	"	"	60	"	65	"	"	"
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8,000	"	"	"	65	"	70	"	"	"
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7,900	"	"	"	70	"	75	"	"	"
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17,000	"	"	"	75	"	80	"	"	"
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12,800	"	"	"	80	"	85	"	"	"
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6,200	"	"	"	85	"	90	"	"	"
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13,800	"	"	"	90	"	95	"	"	"
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8,500	"	"	"	95	"	100	"	"	"
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2,900	"	"	"	100	"	103,78	"	"	"
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Total, 264,000 feet, or fifty (50) miles.

Maximum grade, 103.78 feet per mile.

That also in this distance of fifty (50) there are:

208,751	6-10	feet of straight line.
6,000	" " "	curve 0 deg. 30 min.
12,800	" " "	1 "
2,655	4-10	" " " 1 " 30 "
14,190	" " "	2 "
6,090	" " "	3 "
740	" " "	3 " 50 "
8,673	" " "	4 "
2,800	" " "	5 "
1,300	" " "	6 "

Total, 264,000 feet, or fifty (50) miles.

Minimum radius, 955 37-100 feet.

That all the iron is of American manufacture, and of the best quality, and that the road is of the gauge of four feet eight and one-half inches (4 ft. 8½ in.); that the rails weigh not less than 56 pounds per lineal yard, and the joints are made with fish plates, and that all the rails are fastened with four spikes to each tie; that there are four sidings having an aggregate length of 5,557 5-10 feet, each of them connected with the main track at both ends with good switches; that there is one (1) turntable track, having a length of 331 feet connected with the main track with, a good switch; that there are 2,450 ties per mile of redwood or red-cedar timber, in all cases at least 6x8 inches by 8 feet long (the cross-ties are in the aggregate over 8 inches wide, and make a bearing surface equal to at least 2,640 ties per mile); that the said section is ballasted with sand, gravel and loam, of which the roadbed is composed, no other material being found within many miles of the line of the railroad.

When more suitable material shall be found within a reasonable distance, we have the assurance of the officers that the road will, if necessary, be reballasted.

That the excavations and embankments are in strict conformity to the requirements of law and the instructions.

That there are twenty (20) bridges, all built on pile foundations, as follows:

1 bridge, 2,624 feet long; 164 spans, 16 feet each.

1	"	160	"	10	"	16	"
1	"	128	"	8	"	16	"
1	"	112	"	7	"	16	"
1	"	64	"	4	"	16	"
1	"	48	"	3	"	16	"
2	"	32	"	2	"	16	"
4	"	16	"	1	"	16	"
5	"	10	"	1	"	10	"
3	"	8	"	1	"	8	"

Total 20 bridges.

That there are 141 culverts, as follows:

1 culvert, 6x10 inches, open.

2	"	9x12	"	"
3	"	10x12	"	"
1	"	10x12	"	" penstock.
1	"	10x24	"	"
10	"	1x1	feet, open.	
32	"	1x1	" box.	
4	"	1x1½	" open.	
4	"	1x2	" "	

17	culvert,	1x2	feet,	box.
2	"	1½x2	"	open.
1	"	2x2	"	"
49	"	2x2	box.	
10	"	2x3	"	
3	"	3x2	"	
1	"	3x4	"	

Total, 141 culverts.

No stone suitable for building purposes could be found within a distance of ten (10) miles of the railroad. The material used in the construction of the trestle bridges, culverts and bridge abutments is the most durable the country can afford, being the black or coast redwood or red cedar (the same used for ties), well known on the Pacific coast, and universally sought after on account of its great durability and resistance to decay. We have, however, the assurances of the managers and directors that the culverts and bridge abutments will be rebuilt in stone when and as the same may become necessary, and suitable material can be found within a reasonable distance of the line of the road.

No wood or coal houses have been built, and they do not seem to be necessary. The dryness of the atmosphere, there being but a very light rainfall in winter, with no rain in summer, and the extreme mildness of the climate render the use of covering for fuel entirely unnecessary. If, however, fuel houses shall hereafter be found requisite, the officers promise that they shall be built immediately.

That at Pomona there are 1,020 feet of sidetrack, connected with the main track at both ends with good switches.

That at Cucamonga there is one platform 8 feet by 24 feet.

That there are two section houses at Cucamonga, one 18x30 feet, with wing 10x12 feet, and the other 12x16 feet, both sided with lumber, painted, and covered with shingles.

That there are 1,130 feet of side track at Cucamonga, connected with the main track at both ends with good switches.

That there is one water tank of 18,000 gallons capacity at Cucamonga, supplied by gravity from Cucamonga Creek.

That at Colton there is one passenger and freight house combined, 32x160 feet, sided with planed lumber, painted and covered with shingles. On each side of the building there are platforms ten feet wide, and at each end platforms twelve feet wide.

That there is at Colton one turntable with 331 feet of track, connected at one end by switch with the main track.

That there is at Colton one water tank of 18,000 gallons capacity supplied from a well by a windmill.

That there are two section houses at Colton 12x16 feet each, sided with lumber, painted and covered with shingles.

That there is one coal platform at Colton 20x40 feet.

That there are two side tracks at Colton having an aggregate length of 3,401 5-10 feet connected with the main track at both ends with good switches.

The officers inform us that it is the intention of the company to build at Mound City (three miles from Colton Station), building, platforms, &c., as soon as the necessities of business shall require it.

That at Frinks there is one water tank of 18,000 gallons capacity, supplied from a well by hand power, to be replaced as soon as possible by windmill.

That no locomotive stalls or engine houses, machine or repair shops have been built on this section. Those at Los Angeles, heretofore on April 15th, 1875, reported upon, being amply sufficient to meet its present requirements. If others should become necessary the officers inform us they will be built when and as they shall be required.

Beyond Mound City the road passes through a country almost uninhabited. Work on the next section of fifty miles is progressing rapidly. As soon as that section shall be ready for examination and acceptance, we are informed by the Directors that all facilities, as regards buildings, water tanks, and other erections and structures which may be required for the complete, prompt and thorough working of the road, will be supplied when needed.

The Southern Pacific Railroad Company owns the following locomotives and cars, which are used on this part of its railroad:

LOCOMOTIVES.

No.	Diam. of wheels —inches ...	Size of Cylinder and Length of Stroke.	Weight—tons.	Names of Makers.
1 56		17 x 24	32	Central Pacific R. R. Co., Sacramento, Cal.
2 62		14 x 22	26	McQueen, Schenectady, New York.
3 62		12 x 22	25	McQueen, Schenectady, New York.
4 62		12 x 22	25	McQueen, Schenectady, New York.
5 62		9 x 18	15	Vulcan Iron Works, San Francisco.
19 44		15 x 22	29	McQueen, Schenectady, New York.
21 60		16 x 24	32	McQueen, Schenectady, New York.
22 60		16 x 24	32	McQueen, Schenectady, New York.
23 60		16 x 24	32	McQueen, Schenectady, New York.

CARS.

5 Passenger Cars,	14 Hand Cars,
3 Smoking Cars,	1 Section Car,
1 Baggage Car,	3 Track-laying Cars,
33 Box Cars,	—
107 Platform Cars, Total, 167 Cars.	

The foregoing locomotives and cars are more than sufficient for present business and requirement, and no more will be needed for some considerable time to come.

The road traverses a section of country thinly settled by a population that has hardly any commerce, and in consequence, business must necessarily be, for a time, very limited and unprofitable. As the road advances it is hoped that immigration will be attracted, and the resources and commerce of the country will be developed to such an extent that when eventually, connection shall be made with the main line from the Eastern States there will be enough of freight and travel to establish at least a paying business. The directors say that when, and as the same shall become necessary, an ample supply of first-class rolling stock and other appurtenances will be provided.

That said section of fifty miles of railroad and the telegraph line connected therewith, or any part thereof, has not been constructed "on the line of any other railroad route to aid in the construction of which lands have heretofore (prior to July 27th, 1866) been granted by the United States."

That this section of railroad and telegraph line are both first-class.

That the telegraph line is constructed as follows:

Not less than 30 redwood poles to the mile; size at bottom, 8x8 inches; at top, 4x5 inches; length 24 feet. They are set to a depth of four feet in the ground. Number 9 galvanized wire is used. The office instruments are of the very best quality, of the most improved style, and are furnished by the best manufacturers.

We respectfully recommend the acceptance by the Government of the section of fifty (50) miles of railroad and telegraph line hereinbefore described.

Respectfully submitted:

LEWIS M. FOULKE,

CALVIN BROWN,

EUGENE L. SULLIVAN,

U. S. Railroad Commissioners.

STATE OF CALIFORNIA, }

County of Los Angeles. }

Lewis M. Foulke, Calvin Brown and Eugene L. Sullivan, being duly sworn, severally, each for himself, says that he is United States Railroad Commissioner, and that the matters and things set forth in the foregoing statement, by him subscribed, are true and correct.

LEWIS M. FOULKE,

CALVIN BROWN,

EUGENE L. SULLIVAN.

Subscribed and sworn to before me, Ygnacio Sepulveda, Judge of the District Court of the 17th judicial district of the State of California, in and for the County of Los Angeles, this 21st day of October, A. D. 1875, said court being a court of record.

YGNACIO SEPULVEDA,

District Judge of the Court Aforesaid.

I hereby certify that Ygnacio Sepulveda is the Acting Judge of said Court; that I am well acquainted with his handwriting, and the signature to the above and foregoing affidavit is his genuine signature.

Witness my hand, and the seal of the said Court, the 22nd day of October, A. D. 1875.

(Seal)

A. W. POTTS,

County Clerk and ex-Officio Clerk of said District Court.

— — —
Department of the Interior.

Washington, D. C., 8th Nov., 1875.

Sir:—I have the honor to submit herewith for your consideration and, if deemed proper, for your approval, the report under date 21st ult. of Messrs. Foulke, Brown & Sullivan, commissioners appointed by you to examine the Southern Pac. R. R. & Telegraph Line of California. They have examined an additional section of 50 miles of the (branch) road and telegraph line authorized by the 23rd section of the Act of 3d March, 1871 (known as the Texas Pacific R. W. Act) to be constructed by the said Southern Pac. R. R. Co. This portion of road commences at the termination of Section 1 of said branch, at a point in the N.E. $\frac{1}{4}$ of Section 27, T. 1 S., R. 9 W., San Bernardino Base and Meridian, and runs thence 50 miles to a point in the S.W. $\frac{1}{4}$ of Section 4, T. 3 S., R. 1 W., same base and meridian.

The commissioners report this section completed and equipped as a first-class railroad, and the telegraph is also completed and first class.

I therefore respectfully recommend the acceptance of said 2d Section of 50 miles of branch road and the

issuance to the company constructing it of patents for lands due on account of such construction, agreeably to the provisions of law.

Very respectfully,

Z. CHANDLER,

Secretary.

The President.

[Endorsed]: Department of the Interior, 8th Nov., 1875. Z. Chandler, Secretary, submits to the President Report of Commissioners on 2d Sec. of branch line, 50 miles of Southern Pac. R. R. of California. Executive Mansion, Nov. 11th, 1875. The within recommendations are approved. U. S. Grant.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER.

(No. 31.)

Stephen Potter, Special Examiner.

UNITED STATES OF AMERICA.

(Engraving.)

Department of the Interior,

Washington, D. C., Oct. 2, 1893.

Pursuant to Section 882 of the Revised Statutes, I hereby certify that the annexed papers are true copies of the originals, and of the endorsement thereon, on file in this Department.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name, and caused the seal of the Department of

the Interior to be affixed, the day and year first above written.

(Seal.)

Wm. H. Sims,

Acting Secretary of the Interior Dep.

[Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Ex. No. 31.

Los Angeles, California, June 22nd, 1876.

To Hon. Zachariah Chandler, Secretary of the Interior
of the United States of America:

Sir—We, the undersigned, Commissioners of the United States, appointed to examine the third (3) section of fifty (50) miles of the railroad and telegraph line of the Southern Pacific Railroad Company, authorized by the twenty-third (23rd) section of the Act of Congress, entitled "An Act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of this road, and for other purposes," approved March 3rd, 1871, commencing at the termination of Section No. Two (2) of said railroad at a point in the southwest quarter (SW $\frac{1}{4}$) of Section Four (4), Township Three (3) South, Range One (1) West, San Bernardino Base and Meridian, and running thence in a southeasterly direction fifty (50) miles to a point in the southwest quarter (SW $\frac{1}{4}$) of Section Twenty-four (24,) in Township Five (5) South, Range Seven (7) East, San Bernardino Base and Meridian, certify, that we have carefully examined such Section, and that the alignment and grades are as represented on the accompanying map and profile, and are such as, in view of the capabilities of the ground, the Government should accept as first class.

That in this distance (50) miles there are:

10,200 feet of level line.

8,700	"	"	grades	0 to	5 feet per mile.
11,400	"	"	"	10 "	15 " "
12,400	"	"	"	15 "	20 " "
27,900	"	"	"	20 "	25 " "
10,500	"	"	"	25 "	30 " "
8,000	"	"	"	30 "	35 " "
17,300	"	"	"	35 "	40 " "
13,450	"	"	"	40 "	45 " "
5,700	"	"	"	45 "	50 " "
17,850	"	"	"	50 "	55 " "
18,000	"	"	"	55 "	60 " "
8,500	"	"	"	60 "	65 " "
3,600	"	"	"	65 "	70 " "
8,800	"	"	"	75 "	80 " "
5,100	"	"	"	80 "	85 " "
18,200	"	"	"	85 "	90 " "
9,400	"	"	"	90 "	95 " "
10,700	"	"	"	95 "	100 " "
38,300	"	"	"	100 "	102.96 " "

Total, 264,000 feet, or fifty (50) miles.

Maximum grade, 102 96-100 feet.

That also in this distance of fifty (50) miles, there are:

214,069.3 feet of straight line.

10,500	"	"	curve of 0 deg. 30 min.
24,800	"	"	" 1 "
2,000	"	"	" 1 " 30 "
5,450	"	"	" 2 "
5,150	"	"	" 3 "
2,030.7	"	"	" 3 " 15 "

Total, 264,000.0 feet or fifty (50) miles.

That of this distance of fifty (50) miles there are 6 17-100 miles laid with iron rails, and 43.83 miles laid with steel rails; that all the iron and steel is of American manufacture and of the best quality, and that the road is of the gauge of four feet eight and one-half inches (4 ft. 8½ in.); that the iron rails weigh not less than fifty-six (56) pounds per lineal yard, and the steel rails weigh not less than fifty (50) pounds per lineal yard; that all the joints are made with fish plates, and all the rails are fastened with four spikes to each tie; that there are four (4) sidings, having an aggregate length of 4,627 feet, each of them connected with the main track at both ends with good switches, and one siding 957 feet long, connected at the main track at one end with a good switch; that there are three (3) turntable tracks, each 285 feet long, and connected with the main track by means of a good switch; that there are 2,640 ties per mile (or a bearing surface equivalent to that number of ties) of redwood or red cedar timber, 6x8 inches by 8 feet long; that the said section is ballasted with a superior quality of sand and gravel, of which the roadbed is composed, no better material being found within very many miles of the line of the railroad. When more suitable material shall be found within a reasonable distance we have the assurance of the officers that the road will, if necessary, be reballasted.

That the excavations and embankments are in strict conformity to the requirements of law and the instructions.

That there are forty-four (44) bridges, all built on pile foundation, as follows:

1 bridge 160 feet long, 10 spans 16 feet each.						
3	"	96	"	6	"	16
1	"	64	"	4	"	16
1	"	58	"	[3	"	16
				[1	"	10
8	"	48	"	3	"	16
7	"	32	"	2	"	16
13	"	16	"	1	"	16
4	"	10	"	1	"	10
6	"	8	"	1	"	8

Total 44 bridges.

That there are 92 culverts, as follows:

20 culverts 1x1, box.		
19	"	1x2, "
1	"	1x3, "
37	"	2x2, "
15	"	2x3, "

Total....92 culverts.

No stone suitable for building purposes could be found within a distance of ten (10) miles of the railroad. The material used in the construction of the trestle bridges, culverts and bridge abutments is the most durable the country can afford, being the black or Coast redwood or red cedar (the same used for ties), well known on the Pacific Coast, and universally

sought after on account of its great durability and resistance to decay. We have, however, the assurances of the managers and directors that the culverts and bridge abutments will be rebuilt in stone when and as the same may become necessary, and suitable material can be found within a reasonable distance of the line of the road.

No wood or coal houses have been built, and they do not seem to be necessary. The dryness of the atmosphere—there being but a very light rainfall in winter, with no rain in summer—and the extreme mildness of the climate render the use of covering for fuel entirely unnecessary. If, however, fuel houses shall hereafter be found requisite, the officers promise that they shall be built immediately.

That there are two (2) coal platforms, viz.:

	Ft. In.	Ft. In.
One at White Water, size	14 7	30 3
One at Indian Wells, "	14 7	30 3

That there are five water tanks, each of 18,000 gallons capacity, as follows, viz.:

One at San Gorgonio, supplied from a well by a windmill.

One at Jacinto, supplied by gravity from a spring, 2 82-100 miles distant.

One at White Water, supplied by gravity from a spring, 2 9-10 miles distant.

One at Seven Palms, supplied by gravity from a spring, 1 8-10 miles distant.

One at Indian Wells, supplied from a well by a windmill.

That there are twelve (12) section houses for the accommodation of employees, all of them being sided with planed lumber, painted and covered with shingles, viz:

Two at San Gorgonio, one 15x28 feet, with wing, 10x14 feet; one 12x16 feet, with wing, 8x10 feet.

Two at Jacinto, one 12x16 feet, with wing, 8x10 feet; one 12x16 feet, 8x10 feet.

Two at White River, one 12x18 feet; one 12x16 feet, with wing, 8x10 feet.

Four at Seven Palms, two 12x16 feet each, with wing, 8x10 feet; two 12x16 feet.

Two at a point 40 miles from the commencement of this 50-mile section, one 12x18 feet.

One 12x16 feet, with wing, 8x10 feet.

That the sidings and turntable tracks hereinbefore mentioned are situated as follows, viz:

At San Gorgonio, one siding, 1,175 feet, switch at each end.

At San Gorgonio, one turntable, 285 feet of track.

At San Jacinto, one siding, 975 feet, switch at one end.

At White Water, one siding, 1,191 feet, switch at each end.

At Seven Palms, one siding, 1,131 feet, switch at each end.

At Seven Palms, one turntable, 285 feet of track.

At Indian Wells, one siding, 1,130 feet, switch at each end.

At Indian Wells, one turntable, 285 feet of track.

That at San Gorgonio there are two (2) hand-car and store houses, one 10x12 feet, and one 12x16 feet.

That at Indian Wells there is one station building, consisting of a passenger and a freight house combined, 20 feet by 42 feet, sided with planed lumber, painted, and covered with shingles, and having platforms 42 feet long by 10 feet wide on each side.

That no locomotive stalls or engine-houses, machine or repair shops have been built on this section, those at Los Angeles, heretofore, on April 15th, 1874, reported upon being amply sufficient to meet its present requirements. If others should become necessary, the officers inform us they will build when and as they shall be required.

The Southern Pacific Railroad Company owns the following locomotives and cars, which are used on this part of its railroad, viz.:

LOCOMOTIVES.

No.	Diam. of wheels —inches.	Size of Cylinder and Length of Stroke, inches.	Weight—tons. . .	Name of Makers.
1	56	17 x 24	32	Central Pacific R. R. Co., Sacramento, California.
2	62	14 x 22	26	McQueen, Schenectady, New York.
3	62	12 x 22	25	McQueen, Schenectady, New York.
4	62	12 x 22	25	McQueen, Schenectady, New York.
5	62	9 x 18	15	Vulcan Iron Works, San Francisco.
19	54	15 x 22	29	McQueen, Schenectady, New York.
21	60	16 x 24	32	McQueen, Schenectady, New York.
22	60	16 x 24	32	McQueen, Schenectady, New York.
23	60	16 x 24	32	McQueen, Schenectady, New York.
25	60	16 x 24	32	McQueen, Schenectady, New York.
29	60	16 x 24	32	McQueen, Schenectady, New York.

CARS.

10 Passenger Cars,	137 Platform Cars,
3 Passenger and Bag-	
gage Cars,	31 Hand Cars,
2 Baggage and Mail Cars,	10 Push Cars.
58 Box Cars,	
	Total, 251 Cars.

The foregoing locomotives and cars are more than sufficient for present business and requirements and no more will be needed for some considerable time to come. The road traverses a section of country thinly settled by a population that has hardly any commerce, and in consequence business must necessarily be, for a time, very limited and unprofitable. As the road advances it is hoped that immigration and settlement of the lands will be attracted, and the resources and commerce of the country developed to such an extent that when eventually connection shall be made with the main line from the Eastern States there will be enough of freight and travel to establish at least a paying business. The directors say that when, and as the same shall become necessary, an ample supply of first-class rolling stock and other appurtenances will be provided.

That this section of railroad and telegraph line are both first-class.

That said section of fifty (50) miles of railroad and the telegraph line connected therewith, or any part thereof, has not been constructed "on the line of any other railroad route to aid in the construction of which lands have heretofore (prior to July 27th, 1866), been granted by the United States."

That the telegraph line is constructed as follows: Not less than 30 redwood poles to the mile; size at bottom, 8x8 inches; at top, 4x5 inches; length 24 feet; they are set to a depth of four feet in the ground. Number 9 galvanized wire is used. The office instruments are of the very best quality, of the most improved style, and are furnished by the best manufacturers.

We respectfully recommend the acceptance by the Government of the section of fifty (50) miles of railroad and telegraph line hereinbefore described.

Respectfully submitted:

LEWIS M. FOULKE,
CALVIN BROWN,
EUGENE L. SULLIVAN,
U. S. Railroad Commissioners.

STATE OF CALIFORNIA, }
County of Los Angeles. } ss.

Lewis M. Foulke, Calvin Brown and Eugene L. Sullivan, being duly sworn, severally, each for himself, says that he is United States Railroad Commissioner, and that the matters and things set forth in the foregoing statement by him subscribed are true and correct.

LEWIS M. FOULKE,
CALVIN BROWN,
EUGENE L. SULLIVAN.

Subscribed and sworn to before me, Ignacio Sepulveda, Judge of the District Court of the 17th Judicial District of the State of California, in and for the

County of Los Angeles, this 22nd day of June, A. D. 1876, said court being a court of record.

IGNACIO SEPULVEDA,
District Judge of the Court Aforesaid.

I hereby certify that Ignacio Sepulveda is the acting Judge of said Court; that I am well acquainted with his handwriting, and the signature to the above and foregoing affidavit is his genuine signature.

Witness my hand and the seal of said court, this 22nd day of June, A. D. 1876.

(Seal) A. W. POTTS,

County Clerk and ex-officio Clerk of the District Court of said District.

Department of the Interior,

Washington, D. C., 10 July, 1876.

Sir: I have the honor to submit herewith for your examination, and if deemed proper, for your approval, the report, under date of the 22d ultimo, of Messrs. L. M. Foulke, Calvin Brown, and Eugene L. Sullivan, commissioners appointed by you to examine the Southern Pacific Railroad and Telegraph line of California. They have examined the 3d Section of fifty miles of the branch road and telegraph line authorized by the 23d Section of the Act of 3d March, 1871, (known as the Texas Pacific Railway Act) to be constructed by the Southern Pacific Railroad Company. This portion of road begins at the termination of Section No. 2 of said railroad at a point in the SW. $\frac{1}{4}$ of

Section 4, T. 3 S., R. 1 W., San Bernardino Base and Meridian, and running thence in a southeasterly direction fifty miles to a point in the SW. $\frac{1}{4}$ of Sect. 24, T. 5 S., R. 7 E., same base and meridian.

The commissioners report this section completed and equipped as a first-class railroad, and the telegraph as also completed and first class. I therefore respectfully recommend the acceptance of said 3d section of fifty miles of branch road, and the issuance to the company constructing it of patents for lands due on account of such construction, agreeably to the provisions of law.

I am, sir, very respectfully, your ob't servant,

Z. CHANDLER,

The President.

Secretary.

[Endorsed]: Department of the Interior, 10 July, 1876. Z. Chandler, Secretary, submits to the President Report of Commissioners on 3d section, 50 miles, branch line of So. Pac. R. R. of Cal. Executive Mansion, July 21st, 1876. The within recommendations are approved. U. S. Grant.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER.
(No. 32.)

Stephen Potter, Special Examiner.

UNITED STATES OF AMERICA.

(Engraving)

Department of the Interior,

Washington, D. C., Oct. 2, 1893.

Pursuant to Section 882 of the Revised Statutes, I hereby certify that the annexed papers are true copies of the originals, and of the endorsement thereon, on file in this department.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name, and caused the Seal of the Department of the Interior to be affixed, the day and year first above written.

(Seal.)

Wm. H. Sims,

Acting Secretary of the Interior Dep.

[Endorsed]: Filed Dec. 5, 1893, Wm. M. Van Dyke,
Clerk.

Ex. No. 32.

San Francisco, California, February 17th, 1877.

To Hon. Zachariah Chandler, Secretary of Interior of the United States of America.

Sir: We, the undersigned, Commissioners of the United States, appointed to examine the fourth (4th) section of seventy-eight 59-100 (78 59-100) miles, of the railroad and telegraph line of the Southern Pacific Railroad Company, authorized by the twenty-third (23rd) section of the Act of Congress, entitled "An Act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road, and for other purposes," approved March 3rd, 1871, commencing at or near San Fernando, at the initial point of Section Number One (1) of said railroad heretofore reported upon, said point being in the northwest quarter (NW 1-4) of Section Three (3), Township Two (2) North, Range fifty (50) West, San Bernardino Base and Meridian, and running thence northerly along the line of said railroad, and ending at the termination of the 78 59-100 miles therefrom, in the northeast quarter (NE 1-4) of Section Seventeen (17), Township Eleven (11) North, Range Twelve (12) West, San Bernardino Base and Meridian, certify: That we have

carefully examined such section, and that the alignment and grades are as represented on the accompanying map and profile, and are such as, in view of the capabilities of the ground, the Government should accept as first-class.

That in this distance (78 59-100 miles) there are:

40,900 feet of level line.

17,800	"	"	0 to	5 feet per mile.
20,300	"	"	5 to 10	" "
2,800	"	"	10 "	15 "
16,586-8	"	"	15 "	20 "
9,700	"	"	20 "	25 "
15,675-9	"	"	25 "	30 "
21,000	"	"	30 "	35 "
14,975	"	"	35 "	40 "
17,200	"	"	40 "	45 "
17,637	"	"	45 "	50 "
37,967-9	"	"	50 "	55 "
24,816-3	"	"	55 "	60 "
20,082-7	"	"	60 "	65 "
12,400	"	"	65 "	70 "
5,302-7	"	"	70 "	75 "
24,300	"	"	75 "	80 "
1,880-9	"	"	80 "	85 "
6,300	"	"	85 "	90 "
3,544-3	"	"	90 "	95 "
8,485	"	"	95 "	100 "
7,991-7	"	"	100 "	105 "
23,961-0	"	"	105 "	110 "
16,974-7	"	"	110 "	115 "
26,351-8	"	"	115 "	116 16-100 "

Total, 414,933-7 feet, or 78 59-100 miles.

Maximum grade, 116 16-100 feet per mile.

That also in this distance (78 59-100 miles), there are:

317,063-3	feet of straight line.
32,543-1	" " curve, 12' to 1° inclusive.
13,339-5	" " " 1° " 2° "
10,414-2	" " " 2° " 3° "
8,921-8	" " " 3° " 4° "
6,015-4	" " " 4° " 5° "
11,123-3	" " " 5° " 6° "
1,894-3	" " " 6° " 7° "
7,637-4	" " " 7° " 8° "
1,318-3	" " " 9° 30' "
4,663-1	" " " 10°

Total, 414,933-7 feet, or 78 59-100 miles.

Minimum radius, 573.7 feet.

That this section of seventy-eight 59-100 (78.59-100) miles is laid entirely with steel rails. That all the steel is of American manufacture, and of the best quality; and that the road is of the gauge of four feet eight and one half inches (4ft. 8½in.); that the rails weigh not less than fifty (50) pounds per lineal yard; that all the joints are made with fish plates, and all the rails are fastened with four spikes to each tie; that there are nine (9) sidings, having an aggregate length of 10,493 feet, each of them connected with the main track, at both ends, with good switches, and one siding 1,669 feet long, connected with the main track at one end with a good switch; that there is one turntable track, 274 feet long, connected with the main track with a good switch; that there are 2,640 ties per mile (or a bearing surface equivalent to that number of ties) of redwood or red cedar timber, 6 by 8 inches by

8 feet long; that the said section is ballasted with a superior quality of sand and gravel, of which the road bed is composed, no better material being found within very many miles of the line of the railroad.

That the excavations and embankments are in strict conformity to the requirements of law and the instructions.

That there are fifty-six (56) bridges, all built on pile foundations, as follows:

1 bridge 240 feet long, 15 spans, 16 feet each.

2	"	128	"	"	8	"	16	"	"
---	---	-----	---	---	---	---	----	---	---

2	"	112	"	"	7	"	16	"	"
---	---	-----	---	---	---	---	----	---	---

2	"	96	"	"	6	"	16	"	"
---	---	----	---	---	---	---	----	---	---

6	"	80	"	"	5	"	16	"	"
---	---	----	---	---	---	---	----	---	---

9	"	64	"	"	4	"	16	"	"
---	---	----	---	---	---	---	----	---	---

2 bridges 48 feet long, 3 spans, 16 feet each.

10	"	32	"	"	2	"	16	"	"
----	---	----	---	---	---	---	----	---	---

22	"	16	"	"	1	"	16	"	"
----	---	----	---	---	---	---	----	---	---

Total, 56 bridges.

That there one-hundred and one (101) culverts, as follows:

20 culverts, 1 ft. by 1 ft., box of redwood.

1	"	1 "	x	1½ "	"	"	"	"
---	---	-----	---	------	---	---	---	---

10	"	1 "	x	2 "	"	"	"	"
----	---	-----	---	-----	---	---	---	---

38	"	2 "	x	2 "	"	"	"	"
----	---	-----	---	-----	---	---	---	---

9	"	2 "	x	3 "	"	"	"	"
---	---	-----	---	-----	---	---	---	---

6	"	3 "	x	4 "	"	"	"	"
---	---	-----	---	-----	---	---	---	---

1	"	4 "	x	5 "	"	"	"	"
---	---	-----	---	-----	---	---	---	---

11	"	4 feet,		open	"	"	"	"
----	---	---------	--	------	---	---	---	---

2	"	6 "		"	"	"	"	"
---	---	-----	--	---	---	---	---	---

3	"	8 "		"	"	"	"	"
---	---	-----	--	---	---	---	---	---

Total, 101 culverts.

No stone suitable for building purposes could be found generally along the line of the road in places that were reasonably accessible. It would, in consequence of the rough and mountainous character of part of the country passed through, require a haul by wagon of at least ten miles to get a proper quality of stone to the points on the road where it could have been used, although in some instances a few ledges of rock might be found where the distances in a direct line would be much less.

The timber used in the construction of the bridges, culverts, and bridge abutments is the most durable the country can afford, being the black or coast redwood or red cedar (the same used for ties), well-known on the Pacific Coast and universally sought after on account of its great durability and resistance to decay. We have, however, the assurances of the managers and directors that the culverts and bridge abutments will be rebuilt in stone when, and as the same may become necessary, and suitable material can be found within a reasonable distance of the line of the road.

That in this section of seventy-eight 59-100 (78 59-100) miles there are three tunnels, having an aggregate length of 7,563 2-10 feet, viz:

Tunnel No. 18, situated 23 miles from the commencement of this Section, 264-1 feet in length; all of which is on a 9° 30' curve.

Tunnel No. 19, situated 22 6-10 miles from the commencement of this Section, 332-6 feet in length; all of which is on a tangent.

Tunnel No. 20 (the San Fernando tunnel), situated five (5) miles from the commencement of this Section, 6,966-5 feet in length; all of which is on a tangent.

These tunnels, being excavated through soft rock, required lining. They are well and substantially timbered throughout with the best quality of Coast redwood or Puget Sound cedar, the arch ribs which support the sheeting being in no case more than five feet apart from center to center, and being much nearer where the nature of the ground required it.

These tunnels, inside the timbering, have the following dimensions in the clear, viz:

Height from floor to soffit of arch.....	20 ft. 10 in.
" " " to springing line of arch	12 " 10 "
Width at floor.....	14 " 00 "
" " " at springing line of arch.....	16 " 00 "
That on the 9° 30' curve the two latter dimensions are increased as follows, viz:	
Width at floor.....	15 ft. 00 in.
" " " at springing line of arch.....	17 " 00 "

Suitable portals of timber, strongly framed, have been erected at the ends of each of these tunnels, and proper provisions have been made for full and perfect drainage.

No wood or coal houses have been built, and they do not seem to be necessary. The dryness of the atmosphere—there being but a light rainfall in winter, with no rain in summer—and the extreme mildness of the climate, render the use of covering for fuel entirely unnecessary. If, however, fuel houses shall hereafter be found requisite, the officers promise they shall be built immediately.

That there is one coal platform at Ravenna, size 19 feet by 139 feet.

That there are seven water tanks, viz: One at Newhall, of 18,000 gallons capacity, supplied from a well by a windmill.

One at Lang, of 52,000 gallons capacity, supplied from Santa Clara Creek through a pipe 4,450 feet long.

One at Ravenna, at 52,090 gallons capacity, supplied by gravity from a spring distant about 3,000 feet.

One at Acton, of 5,200 gallons capacity, supplied from a well by a steam engine.

One at Alpine, of 52,000 gallons capacity, supplied by gravity from a spring 12,350 feet distant.

One at Lancaster, of 52,000 gallons capacity, supplied from a well by a steam pump.

One at Sand Creek, of 52,000 gals. capacity, supplied from a well by a windmill.

That there are section houses for the accommodation of employes, as follows, viz:

One at San Fernando Tunnel, size 16x30 feet, with wing 12x16 feet.

Three at Newhall, one 16x30 feet, with wing 12x16 feet; one 14x22 feet; one 12x24 feet.

Three at Lang, one 16x30 feet, with wing 12x16 feet; one 14x22 feet; one 12x14 feet.

Three two miles east of Ravenna, one 16x30 feet, with wing 12x16 feet; one 18x20 feet; one 12x14 feet.

Three at Alpine, one 16x30 feet, with wing 12x16 feet; one 14x22 feet; one 12x14.

Three at Lancaster, one 16x30 feet, with wing 12x16 feet; one 14x22 feet; one 12x14 feet.

Three at Sand Creek, one 16x30 feet, with wing 12x16 feet; one 14x22 feet; one 12x14 feet.

That all these houses are sided with rough lumber and covered with shingles, and all of them, except the one at San Fernando Tunnel, are painted.

That there are hand-car and tool houses along the line of the road as follows, viz:

One at San Fernando Tunnel	12x14 feet
One at Newhall	12x14 feet.
One at Lang	12x14 feet.
One at Ravenna	14x20 feet.
One at Alpine	12x14 feet.
One at Lancaster	12x14 feet.
One at Sand Creek	14x20 feet.

All these houses are sided with rough lumber and covered with shingles and all of them are painted, except the one at San Fernando Tunnel.

That the sidings and turntable track hereinbefore mentioned are situated as follows, viz:

At San Fernando Tunnel, 1 siding, 817 feet, switch at each end of track.

At San Fernando Tunnel, 1 turntable, 274 feet, switch at each end of track.

At Andrews, 1 siding, 994½ feet, switch at each end.

At Newhall, 1 siding, 1,167 feet, switch at each end.

At Lang, 1 siding, 1,031 1-2 feet, switch at each end.

At Ravenna, 1 siding, 1,121 feet, switch at each end.

At Acton, 1 siding, 1,136 feet, switch at each end.

At Alpine, 1 siding, 1,536 feet, switch at each end.

At Alpine, 1 siding, 1,669 feet, switch at one end.

At Lancaster, 1 siding, 1,400 feet, switch at each end.

At Sand Creek, 1 siding, 2,200 feet, switch at each end.

That for the accommodation of passengers and freight business there are station houses and freight buildings as follows, viz:

At San Fernando Tunnel, a passenger and freight house combined, 16 feet by 80 feet, made with rough lumber and covered with shingles, and having platforms 6 feet wide at the front and rear, and one of 11 feet wide at one end of the building, and one of 23 feet wide at the other end of it.

At Andrews, a freight house 18 feet x 30 feet, made with planed lumber, painted, and covered with shingles, and having platforms 10 feet wide at the front and rear, and one of 8 feet wide at one end of the building, and one of 22 feet wide at the other end of it.

At Newhall, a station building, consisting of a passenger and freight house combined, 32 feet by 131 feet, made with planed lumber, painted, and covered with shingles, and having platforms 10 feet wide at each side.

At Revena, a station building, consisting of a passenger and freight house combined, 24 feet by 62 feet, made with planed lumber, painted, and covered with shingles, with platforms 10 feet wide on each side.

That there is at Revena a sand house 12 feet by 20 feet, made with rough lumber, painted, and covered with shingles.

That there is at San Fernando Tunnel an engine house (of one stall), sided with planed lumber, painted and covered with shingles. This, together with those at Mojave, described below, and at Los Angeles, where the company has built an extensive engine house, and with those at other points on the road, already reported upon, are amply sufficient to meet the present requirements of this section.

That no machine or repair shops have been built on this section. The company has erected at Los Angeles,

on Section Number One of this line, heretofore reported upon, extensive machine and repair shops, which, with those at other points upon the road, also already reported upon, will be amply sufficient to meet all its requirements for some time to come.

(NOTE.—At a point 1,500 feet north of the end of this section of 78 59-100 miles, to-wit, at "Mojave Station," the company has constructed the following, intended for the use and operation of this section as well as for that of the section immediately north of it, viz:

One station building, consisting of a passenger and freight house combined, 32 feet by 131.6 feet, made with rough lumber, painted and covered with shingles. On three sides of the building there are platforms 10 feet wide. On the fourth side the platform is 50 feet long by 52 feet wide.

Three section houses for accommodation of employes, viz: One 16x30 feet, with wing 12x16 feet; one 14x22 feet, and one 12x14 feet.

Two hand-car and tool houses, each 12x14 feet.

One office, 20x40 feet.

One sand house, 24x30 feet.

All these houses are sided with rough lumber, painted and covered with shingles.

There are also at Mojave:

One engine house of 15 stalls.

One coal platform, 28x422 feet.

Two water tanks, each of 52,000 gallons capacity, supplied from a distant spring by gravity.

Five sidings, aggregate length 7,802 ft., switches at each end.

One spur track, 1,223 feet.

One turntable, with 1,014 feet of track.

The Southern Pacific Railroad Company owns the following locomotives and cars, which are used on the entire line of its railroad, which includes this section of seventy-eight 59-100 miles:

LOCOMOTIVES.

No	Name.	Diam. of Wheels.	Size of Cylinder and Length of Stroke.	Weight. In.	Tons.	Name of Makers.
1	Huntington	54	11x15	16	Danforth, Cook & Co.	
2	San Francisco	60	14x22	25	Norris	
3	Pacific	60	14x22	25	Norris	
4	Comanche	60	14x22	26	Danforth, Cooke & Co.	
5	San Mateo	60	14x22	26	Danforth, Cooke & Co.	
6	California	60	16x24	32	Booth & Co.	
7	Atlantic	60	16x24	32	Booth & Co.	
8	Union	48	14x18	18	Booth & Co.	
9	Jas. Donahue	66	17x22	32	Danforth, Cooke & Co.	
10	H.M. Newhall	54	18x24	34	Danforth, Cooke & Co.	
11	Menlo Park.	66	15x24	30	William Mason	
12	Racer	60	15x24	31	McKay & Aldus	
13	Shoshone	60	16x22	31	Norris	
14	Red Eagle	60	15x22	29	Danforth, Cook & Co.	
15	Ranger	60	15x24	31	McKay & Aldus	
16	Black Deer	60	16x22	31	McKay & Aldus	
17	Orinoco	60	14x24	28	Norris	
18	Peeler	54	15x22	29	McQueen, Schenectady	
19		54	15x22	29	McQueen, Schenectady	
20		60	16x24	34½	Baldwin	

No.	Name.	Diam. of Wheels.	Size of Cylinder and Length of Stroke.		Weight. Tons.	Name of Makers.
			In.	Tons.		
21		60	16x24	32	McQueen, Schenectady	
22		60	16x24	32	McQueen, Schenectady	
23		60	16x24	32	McQueen, Schenectady	
24		60	16x24	32	McQueen, Schenectady	
25		60	16x24	32	McQueen, Schenectady	
26		60	17x24	32½	McQueen, Schenectady	
27		60	17x24	32½	McQueen, Schenectady	
28		60	17x24	32½	McQueen, Schenectady	
29		60	16x24	32	McQueen, Schenectady	
30		56	17x24	32	Central Pacific R. R. Co., Sacramento	
31		62	14x22	26	McQueen, Schenectady	
32		62	12x22	25	McQueen, Schenectady	
33		62	12x22	25	McQueen, Schenectady	
34		62	9x18	15	Vulcan Iron Works, San F. Co.	
35		54	18x24	32½	McQueen, Schenectady	
36		54	18x24	32½	McQueen, Schenectady	
37		54	18x24	32½	McQueen, Schenectady	
38		54	18x24	32½	McQueen, Schenectady	
39		54	18x24	32½	McQueen, Schenectady	
40		54	18x24	32½	McQueen, Schenectady	
41		54	18x24	32½	McQueen, Schenectady	
42		54	18x24	32½	McQueen, Schenectady	
43		54	18x24	32½	McQueen, Schenectady	
44		54	18x24	32½	McQueen, Schenectady	

CARS.

34 passenger cars.	1 boarding car.
1 parlor "	117 box cars.
4 passenger & baggage cars	440 combination cars.
6 smoking cars.	24 stock "
20 emigrant "	328 flat "
8 baggage "	12 dump "
1 officers' "	9 stone "
1 pay "	54 hand "
1 hunting "	48 push "
4 caboose "	2 wood "

The above locomotives and cars are amply sufficient to accommodate present commerce and travel, as this section of 78 59-100 miles runs through a country almost unsettled and undeveloped, affording but little, if any, present additional business to the road. The directors say that when and as the same shall become necessary an ample supply of first-class rolling stock and other appurtenances will be provided. That this section of railroad and telegraph line was completed and equipped on the 5th day of September, 1876, and that both are first-class.

That said section of seventy-eight 59-100 miles of railroad and the telegraph line connected therewith, or any part thereof, has not been constructed "on the line of any other railroad route to aid in the construction of which lands have heretofore (prior to July 27th, 1866,) been granted by the United States."

That the telegraph line is constructed as follows: Not less than 30 redwood poles top the mile. Size at bottom, 8x8 inches; at top, 4x5 inches; length, 24 feet.

They are set to a depth of four feet in the ground. Number 9 galvanized wire is used. The office instruments are of the very best quality, of the most improved style, and are furnished by the best manufacturers.

We respectfully recommend the acceptance by the Government of the section of seventy-eight 59-100 (78 59-100) miles of railroad and telegraph line hereinbefore described.

LEWIS M. FOULKE,

CALVIN BROWN,

EUGENE L. SULLIVAN,

U. S. Railroad Commissioners.

STATE OF CALIFORNIA,

City and County of San Francisco. }
} ss.

Lewis M. Foulke, Calvin Brown, and Eugene L. Sullivan, being duly sworn, severally, each for himself, says that he is United States Railroad Commissioner, and that the matters and things set forth in the foregoing statement by him subscribed are true and correct.

LEWIS M. FOULKE.

CALVIN BROWN.

EUGENE L. SULLIVAN.

Subscribed and sworn to before me, Samuel H. Dwinelle, Judge of the District Court of the 15th Judicial District of the State of California, in and for the City and County of San Francisco, this 17th day of February, A. D. 1877, the same being a court of record.

As witness my hand and the seal of said court the date aforesaid.

SAML. H. DWINELLE,
District Judge of the Court aforesaid.

I hereby certify that Samuel H. Dwinelle is the acting Judge of said court; that I am well acquainted with his handwriting, and that the signature to the above and foregoing affidavit is his genuine signature.

Witness my hand and the seal of said court this 17th day of February, A. D. 1877.

(Seal.) THO. H. REYNOLDS,
County Clerk of the City and County of San
Francisco, California, and ex-officio Clerk
of said District Court of 15th Judicial Dis-
trict.

Department of the Interior,
Office of the Secretary,
Washington, D. C., 1st March, 1877.

SIR: I have the honor to submit herewith for your consideration, and if deemed proper for your approval, the report, under date of the 17th ultimo, of Messrs. L. M. Foulke, Calvin Brown, and Eugene L. Sullivan, commissioners appointed by you to examine the Southern Pacific Railroad and telegraph line of California. They have examined the 4th Section, 78.59 miles of the road, which said company are authorized by the 23d section of the Act of 3d March, 1871, (16 Stat., 579,) to build. Said section begins at a point in the NW. 1-4 of Sect. 3, T. 2 N., R. 15 W., San Bernardino Base and Meridian, runs northerly, and ends at a point in the NE. 1-4 Sect. 17, T. 11 N., R. 12 W.,

same base and meridian. They report said section as completed and equipped as a first-class railroad, and the telegraph line also as completed and first-class. I therefore respectfully recommend the acceptance of said 4th Section, and the issuance to the company constructing it of patents for lands due on account of said construction, agreeably to the provisions of law.

I am, sir, very respectfully, your ob't servant,

CHARLES T. GORHAM,

Acting Secretary.

The President.

[Endorsed]: Department of the Interior, 1st March, 1877. Charles T. Gorman, Acting Secretary, submits to the President Report of Commissioners on 4th Section (branch line), 78.59 miles, of So. Pac. R. R. C. of California.

Executive Mansion, March 2nd, 1877.

The within recommendations are approved.

U. S. GRANT.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER,
No. 33.

Stephen Potter, Special Examiner.

UNITED STATES OF AMERICA.

(Engraving.)

Department of the Interior,

Washington, D. C., Oct. 2, 1893.

Pursuant to Section 882 of the Revised Statutes, I hereby certify that the annexed papers are true copies

of the originals, and of the endorsement thereon, on file in this Department.

(Seal) In TESTIMONY WHEREOF, I have hereunto subscribed my name, and caused the seal of the Department of the Interior to be affixed, the day and year first above written.

Wm. H. Sims,
Acting Secretary of the Interior Dep.

[Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke,
Clerk.

Ex. No. 33.

San Francisco, California,
December 6th, 1877.

To Hon. Carl Schurtz, Secretary of the Interior of the
United States of America:

Sir: We, the undersigned Commissioners of the United States, appointed to examine the fifth (5) section of one hundred and eighteen 37-100 (118 37-100) miles of the railroad and telegraph line of the Southern Pacific Railroad Company, authorized by the Twenty-third (23) Section of the Act of Congress entitled "An Act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road, and for other purposes," approved March 3rd, 1871, commencing at the termination of section number three (3) of said railroad, at a point in the southwest quarter (SW. $\frac{1}{4}$) of Section Twenty-four (24), in Township Five (5) South of Range (7) Seven East, San Bernardino Base and Meridian, and running thence in a southeasterly direction along the line of

said railroad and ending at the termination of the one hundred and eighteenth 37-100 (118.37) miles from commencement at the southern boundary of the State of California, in the center of the Colorado River, at a point which would be, if the U. S. land surveys were extended into said river, in the southeast quarter (SE. 4) of Section Twenty-six (26) in Township Sixteen (16) South of Range Twenty-two (22) East, San Bernardino Base and Meridian, certify that we have carefully examined such section, and that the alignment and grades are as represented on the accompanying maps and profile, and are such as, in view of the capabilities of the ground, the Government should accept as first class:

That in this distance (118.37 miles, there are:

139,448.1	feet of level lines
96,500.0	" " grades 0 to 5 feet per mile
112,800.0	" " " 5 " 10 " " "
115,100.0	" " " 10 " 15 " " "
58,700.0	" " " 15 " 20 " " "
33,100.0	" " " 20 " 25 " " "
22,700.0	" " " 25 " 30 " " "
7,437.2	" " " 30 " 35 " " "
7,000.0	" " " 35 " 40 " " "
7,300.0	" " " 40 " 45 " " "
3,086.6	" " " 45 " 50 " " "
21,797.3	" " " 50 " 52 8.10 " "

Total 624,969.2 feet, or one hundred and eighteen .37 miles.

Maximum grade 52 8-10 feet per mile.

That also in this distance (118.37) miles there are:

572,077	N	feet of straight line.
9,802.5	" "	curve 0 deg. 20 min.
29,442.9	" "	0 deg. 30 min.
2,562.2	" "	1 deg. 30 min.
4,274.9	" "	2 deg.
4,144.0	" "	2 deg. 40 min.
483.5	" "	3 deg.
1,444.8	" "	4 deg.
737.2	" "	9 deg.

Total .624,969.2 feet, or one hundred and eighteen .37-100 miles.

Minimum radius, 637.27 feet.

That said section of one hundred and eighteen .37-100 (118.37) miles is laid with steel rails; that all the steel is of American manufacture and of the best quality; that the road is of the gauge of four feet eight and one half inches (4 ft. 8½ in.); that the rails weigh not less than fifty (50) pounds per lineal yard; that all the joints are made with fish plates and all the rails are fastened with four spikes to each tie; that there are nine sidings, having an aggregate length of 13,078 feet, each of them connected with the main track at both ends with good switches, and four (4) sidings, having an aggregate length of seven hundred and ten (710) feet, connected with the main track at one end with a good switch; that there are two (2) turntable tracks, having an aggregate length of eleven hundred and sixty-one (1,161) feet, each connected with the main track by means of a

good switch; that there are 2,640 ties per mile (or a bearing surface equivalent to that number of ties) of redwood or red cedar timber, 6 by 8 inches by 8 feet long; that the said section is ballasted with a superior quality of sand and gravel of which the road-bed is composed, no better material being found within very many miles of the line of the railroad. When more suitable materials shall be found within a reasonable distance we have the assurance of the officers that the road will, if necessary, be reballasted;

That the excavations and the embankments are in strict conformity to the requirements of law and instructions;

That there is one (1) straining-beam bridge across the Colorado River, 668 feet in length, consisting of six (6) fixed spans of 80 feet each, resting upon piled foundations, and of one (1) pivot drawbridge having two (2) spans of 93 feet 7 inches each. The pivot pier is constructed in the most substantial manner and is founded on rock upon the southern bank of the river. Two hundred and fifty-seven (257) feet of the north end of this bridge are included in this section of 118.37 miles.

That there are also 123 trestle bridges, all built on pile foundations, as follows:

1 bridge 640 feet long, 40 spans, 16 feet each.							
1	"	272	"	"	17	"	16
1	"	256	"	"	16	"	16
3	"	208	"	"	13	"	16
2	"	176	"	"	11	"	16
1	"	160	"	"	10	"	16
1	"	112	"	"	7	"	16

4 bridge	640	feet long,	40	spans,	16	feet each.
10	"	80	"	"	5	"
5	"	64	"	"	4	"
9	"	48	"	"	3	"
36	"	32	"	"	2	"
48	"	16	"	"	1	"
1	"	10	"	"	1	"
<hr/>						

Total, 123 trestle bridges.

There are 329 culverts, as follows:

7	culverts,	1x1	feet,	box	of redwood.
29	"	1x2	"	"	"
132	"	2x2	"	"	"
135	"	2x3	"	"	"
22	"	3x3	"	"	"
4	"	3x4	"	"	"
<hr/>					

Total, 329 culverts.

No stone suitable for building purposes could be found within a distance of ten (10) miles of the railroad. The material used in the construction of the bridges, culverts, and bridge abutments is the most durable the country can afford, being the black or Coast redwood or red cedar (the same used for ties,) wellknown on the Pacific Coast, and universally sought after on account of its great durability and resistance to decay. We have, however, the assurances of the managers and directors that the culverts and bridge abutments will be rebuilt in stone, when, and as the same may become necessary, and suitable material can be found within a reasonable distance of the line of the road.

No wood or coal houses have been built, and they do not seem to be necessary. The dryness of the atmosphere—there being but a very little rainfall in winter, with no rain in summer—and the extreme mildness of the climate render the use of covering for fuel entirely unnecessary. If, however, fuel houses shall hereafter be found requisite, the officers promise that they shall be built immediately.

That no coal platforms have yet been erected on this section of 118.37 miles (one 20x150 feet has been built at Yuma, 2,800 feet south of the end of this section, the same to be used in the operation of this part of the railroad).

That there are two water tanks, each of 52,000-gallon capacity, as follows, viz.:

One at Walters, supplied from a well by steam pump.

One at Colorado River, supplied from the river by steam pump.

That there are twenty-one (21) section houses for the accommodation of employees, as follows, viz.:

Three at Walters—One 14x40 feet, with wings 10x16 feet, sided with planed lumber; one 18x20 feet, of rough lumber; one 12x14 feet, of rough lumber.

Three at Dos Palmos—One 14x40 feet, with wing 10x16 feet, sided with planed lumber; one 18x20 feet, of rough lumber; one 12x14 feet, of rough lumber.

Three at Volcano—One 14x40 feet, with wing 10x16 feet, sided with planed lumber; one 18x20 feet, of rough lumber; one 12x14 feet, of rough lumber.

Three at 0.76 mile north of Flowing Well—One 14x40 feet, with wing 10x16 feet, sided with planed

lumber; one 18x20 feet, of rough lumber; one 12x14 feet, of rough lumber.

Three at Mammoth Tank—One 14x40 feet, with 10x16 feet, sided with planed lumber; one 18x20 feet, of rough lumber; one 12x14 feet, of rough lumber.

Three at 2.58 miles south of Mesquite—One 14x40 feet, with wing 10x16 feet, sided with planed lumber; one 18x20 feet, of rough lumber; one 12x14 feet of rough lumber.

Three at 7.25 miles south of Cactus—One 14x40 feet, with wing 10x16 feet, sided with planed lumber; one 18x20 feet, of rough lumber; one 12x14 feet, of rough lumber.

All of the above described section houses are painted and covered with shingles, and each of them is provided with a double roof, painted.

That there are seven (7) hand-car and tool houses on this section along the line of the road, viz:

One at Walters, size 14x20 feet.

One at Dos Palmos, size 14x20 feet.

One at Volcano, size 14x20 feet.

One 0.76 mile north of Flowing Well, size 14x20 feet.

One at Mammoth Tank, size 14x20 feet.

One at a point 2.58 miles south of Mesquite, 14x20 feet.

One at a point 7.25 miles south of Cactus, size 14x20 feet.

All of the houses are sided with rough lumber, painted and covered with shingles.

That the sidings and turntable tracks, hereinbefore mentioned are situated as follows, viz:

At Walters, one siding, 1,815 feet, with good switch at each end.

At Dos Palmos, one siding, 1,171 feet, with good switch at each end.

At Frinks Spring, one siding, 1,291 feet, with good switch at each end.

At Flowing Well, one siding, 1,652 feet, with good switch at each end.

At Tortuga, one siding, 1,500 feet, with good switch at each end.

At Mammoth Tank, one siding, 917 feet, with good switch at each end.

At Mesquite, one siding, 2,619 feet, with good switch at each end.

At Caetus, one siding, 900 feet, with good switch at each end.

At Pilot Knob, one siding, 1,213 feet, with good switch at each end.

At Dos Palmos, one turntable, and track 331 feet in length.

At Pilot Knob, one turntable, and track 830 feet in length.

No passenger stations or freight buildings have been built on this section of 118.37 miles, and none are required for the railroad passes through the Colorado Desert, which is uninhabitable and without commerce of any kind.

(Note—At a point 2,800 feet south of the end of this section, to-wit, at Yuma Station, in Arizona Territory, that there is in course of construction by the Southern Pacific Railroad Company one station building consisting of a passenger and freight house combined, 32 feet by 100 feet, to be built of planed lumber, and to be painted and covered with shingles and to have plat-

forms on each side the whole length of the building, and ten feet wide.)

Also that there is at said Station (Yuma) the following structures, which have been completed:

One freight house, for the accommodation of river freight, 32 feet by 90 feet.

One engine house of 7 stalls.

One sand house, 18 x 35 feet.

One water tank of 52,000 gallons capacity, supplied from the Colorado River by a steam pump.

One coal platform 20 ft. by 150 feet.

That there are also at Yuma:

Five sidings having an aggregate length of 5,562 feet, connected with the main track by good switches at each end.

One spur track, 1,100 feet in length, connected to the main track with a good switch.

One turntable, with 750 feet of track, connected with main track by a good switch.

These buildings, water tank, platform, etc., are constructed for and intended to be used in the operation of this section of 118.37 miles as well as for that of the section of railroad immediately south of it in the Territory of Arizona.

That no locomotive stalls or engine houses, machine or repair shops have been built on this section, the extensive ones at Los Angeles and at other points on the line heretofore reported upon and those above mentioned at Yuma, Arizona Territory, being amply sufficient to meet its present requirements. If others shall become necessary, the officers inform us they will be built when, and as they shall be required. The Southern Pacific Railroad Company owns the follow-

ing locomotives and cars which are used on the entire line of its railroad, which includes this section of 118,37-100 miles.

LOCOMOTIVES.

No.	Diam. of wheels —inches.....	Size of Cylinder and Length of Stroke— inches	Weight—tons..	Names of Makers.
1	54	11 x 15	16	Danforth, Cook & Co.
2	60	14 x 22	25	Norris.
3	60	14 x 22	25	Norris.
4	60	14 x 22	26	Danforth, Cook & Co.
5	60	14 x 22	27	Danforth, Cook & Co.
6	60	16 x 24	32	Booth & Co.
7	60	16 x 24	32	Booth & Co.
8	48	14 x 18	18	Booth & Co.
9	66	17 x 22	32	Danforth, Cook & Co.
10	54	18 x 24	34	Danforth, Cook & Co.
11	66	15 x 24	30	William Mason.
12	60	15 x 24	31	McKay & Aldus.
13	60	16 x 22	31	Norris.
14	60	15 x 22	29	Danforth, Cook & Co.
15	60	15 x 22	31	McKay & Aldus.
16	60	16 x 22	31	McKay & Aldus.
17	60	14 x 24	28	Norris.
18	54	15 x 22	29	McQueen, Schenectady.
19	54	15 x 22	29	McQueen, Schenectady.
20	60	16 x 24	34 $\frac{1}{3}$	Baldwin.
21	60	16 x 24	32	McQueen, Schenectady.
22	60	16 x 24	32	McQueen, Schenectady.
23	60	16 x 24	32	McQueen, Schenectady.

No.	Diam. of Wheels —inches	Size of Cylinder and Length of Stroke— inches.....	Weight—tons... .	Names of Makers.
24	60	16 x 24	32	McQueen, Schenectady.
25	60	16 x 24	32	McQueen, Schenectady.
26	60	17 x 24	32 $\frac{1}{2}$	McQueen, Schenectady.
27	60	17 x 24	32 $\frac{1}{2}$	McQueen, Schenectady.
28	60	17 x 24	32 $\frac{1}{2}$	McQueen, Schenectady.
29	60	17 x 24	32	McQueen, Schenectady.
30	56	17 x 24	32	Central Pacific R. R. Co., Sacramento.
31	62	14 x 22	26	McQueen, Schenectady.
32	62	12 x 22	25	McQueen, Schenectady.
33	62	12 x 22	25	McQueen, Schenectady.
34	62	9 x 18	15	Vulcan Iron Works, San Francisco.
35	54	18 x 24	32 $\frac{1}{2}$	McQueen, Schenectady.
36	54	18 x 24	32 $\frac{1}{2}$	McQueen, Schenectady.
37	54	18 x 24	32 $\frac{1}{2}$	McQueen, Schenectady.
38	54	18 x 24	32 $\frac{1}{2}$	McQueen, Schenectady.
39	54	18 x 24	32 $\frac{1}{2}$	McQueen, Schenectady.
40	54	18 x 24	32 $\frac{1}{2}$	McQueen, Schenectady.
41	54	18 x 24	32 $\frac{1}{2}$	McQueen, Schenectady.
42	54	18 x 24	32 $\frac{1}{2}$	McQueen, Schenectady.
43	54	18 x 24	32 $\frac{1}{2}$	McQueen, Schenectady.
44	54	18 x 24	32 $\frac{1}{2}$	McQueen, Schenectady.

CARS.

35 Passenger Cars,	1 Passenger and Baggage Car,
1 Parlor Car,	
23 Emigrant Cars,	8 Smoking Cars,
8 Baggage Cars,	328 Flat Cars,
1 Officers' Car,	12 Dump Cars,
1 Pay Car,	8 Stone Cars,
1 Hunting Car,	116 Hand Cars,
8 Caboose Cars	62 Push Cars,
1 Boarding Car,	2 Wood Cars,
117 Box Cars,	20 Water Cars,
440 Combination Cars, ——	
24 Stock Cars, Total 1217	

The above locomotives and cars are more than sufficient for present business and requirements, and no more will be needed for some considerable time to come. The road traverses a section of country thinly settled by a population that has hardly any commerce, and in consequence business must necessarily be for a time very limited and unprofitable. As the road advances it is hoped that immigration and settlement of the lands will be attracted and the resources and commerce of the country developed to such an extent that when, eventually, connection shall be made with the main line from the Eastern States, there will be enough of freight and travel to establish at least a paying business. The directors say that when, and as the same shall become necessary, an ample supply of first-class rolling stock and other appurtenances will be provided.

That this section of railroad and telegraph line are both first class.

That said section of one hundred and eighteen 37-100 (118.37-100) miles of railroad and the telegraph line connected therewith, or any part thereof, has not been constructed "on the line of any other railroad route to aid in the construction of which lands have heretofore (prior to July 27, 1866), been granted by the United States."

That the telegraph line is constructed as follows: Not less than 30 red wood poles to the mile; size at bottom, 8x8 inches; at top, 4x5 inches; length, 24 feet; they are set to a depth of four feet in the ground. No. 9 galvanized wire is used. The office instruments are of the very best quality, of the most improved style, and are furnished by the best manufacturers.

We recommend the acceptance by the Government of the section of one hundred and eighteen, 37-100 miles of railroad and telegraph line hereinbefore described.

Respectfully submitted,

EUGENE L. SULLIVAN,

ANDREW S. BENDER,

ZEBULOW B. STURGIS,

U. S. Railroad Commissioners.

STATE OF CALIFORNIA, }
City and County of San Francisco, } ss.

Eugene L. Sullivan and Andrew S. Bender, being duly sworn, severally, each for himself, says, that he

is United States Railroad Commissioner, and that the matters and things set forth in the foregoing statement by him subscribed are true and correct.

EUGENE L. SULLIVAN.

ANDREW S. BENDER.

Subscribed and sworn to before me, E. D. Wheeler, Judge of the District Court of the 19th judicial district of the State of California, in and for the City and County of San Francisco, this 6th day of December, A. D. 1877, said court being a court of record.

E. D. WHEELER,
District Judge of Court aforesaid.

I hereby certify that E. D. Wheeler is the acting judge of said court; that I am well acquainted with his handwriting, and that the signature to the above and foregoing affidavit is his genuine signature.

Witness my hand and the seal of said court this 10th day of December, A. D. 1877.

(Seal.) THOMAS H. REYNOLDS,

County Clerk of the City and County of San Francisco, California, and ex-officio clerk of said District Court of the 19th Judicial District.

DISTRICT OF COLUMBIA, }
City and County of Washington, } ss.
} ss.

Zebulow B. Sturgis, being duly sworn, says that the matters and things set forth in the foregoing statement by him subscribed are true and correct.

ZEBULOW B. STURGIS.

Subscribed and sworn to before me, a Notary Public,
this 26th day of December, A. D. 1877.

(Seal) M. P. CALLAN,
Notary Public, Clerk's Office of the Supreme
Court of the District of Columbia.

DISTRICT OF COLUMBIA, ss.

I, R. J. Meigs, Clerk of the said court, do hereby certify that M. P. Callan, Esq., whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such proof or acknowledgment, a Notary Public in and for the said District, dwelling therein, commissioned, sworn, and duly authorized to take the same. And further, that I am well acquainted with the handwriting of said M. P. Callan, and verily believe that the signature to the said certificate of proof or acknowledgment is genuine and the said instrument is executed and acknowledged according to the laws of this district.

IN TESTIMONY WHEREOF, I have hereunto set my name and affixed the seal of said court, this 26th day of December, A. D. 1877.

R. J. MEIGS,
Clerk.

(Seal) By R. J. MEIGS, JR.,
Assistant Clerk.

Department of the Interior,

Office of the Secretary,

Washington, D.C., 19th January, 1878.

Sir: I have the honor to submit herewith for your consideration the report, under date of the 6th ultimo, of Messrs. Eugene L. Sullivan, Andrew S. Bender and Zebulow B. Sturgis, commissioners appointed by you to examine the Southern Pacific Railroad and Telegraph Line of California.

They have examined the 5th section of what is known as the Branch Line of said road, authorized by the 23d Section of the Act of 3d March, 1871, incorporating the Texas Pacific Railroad Company (16 Stat., 579). Said section is 118 37-100 miles in length. It begins at a point in the S.W. $\frac{1}{4}$ of Section 24, T. 5 S., R. 7 E., San Bernardino Base and Meridian; runs southeastward and ends in the center of the Colorado River at a point which, if the United States survey were extended into said river would be in the S. E. $\frac{1}{4}$ of Sec. 26, T. 16 S., R. 22 E., same base and meridian.

The Commissioners report said section as completed and equipped as a first-class railroad, and the telegraph line as also complete and first-class.

Said 23d section of the Act of 1871 authorizes the Southern Pacific Railroad Company of California to construct its road "to the Texas Pacific Railroad at or near the Colorado River." The Texas Pacific Railroad not having been constructed at or near said river,

the point of contact of said roads has not been ascertained, except as to the fact that it is within the Fort Yuma military reservation.

In view of your action last autumn in relation to said Southern Pacific Railroad's crossing said reservation, I have the honor to recommend that said section, examined and reported on, be accepted from the point of beginning to the point where the road intersects the western boundary of said reservation, which is represented on the map accompanying said report as a point in the SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ Sec. 27, T. 16 S., R. 22 E., San Bernardino Base and Meridian, and that patents for lands due on account of construction, according to provisions of law, issue to said Southern Pacific Railroad Company of California.

I am, sir, very respectfully, your ob't servant,

C. SCHURTZ, Secretary.

The President.

[Endorsed]: The Secretary of the Interior, 19th January, 1878, submits Report of Commissioners on the 5th Section, 118.37 miles of Southern Pacific Railroad, authorized by Act of 3d March, 1871, and recommends that the road examined be accepted from the beginning of said section to the point where it crosses the western boundary of Ft. Yuma Military Reservation, Cal.

Executive Mansion, January 23rd, 1878.

The recommendations of the Secretary of the Interior are hereby approved. The section of railroad is accepted between the points designated by him, and lands will be patented to the company accordingly.

R. B. HAYES.

Circuit Court of the United States.

UNITED STATES OF AMERICA,
Complainant,
vs.
SOUTHERN PACIFIC R. R. Co., } No. 184.
ET AL., }
Defendants.

Report of Special Examiner—Exhibits 34 to 51.

Land Department,
Southern Pacific Railroad Company.

San Francisco, Cal., April 28th, 1893.

Statement of the legal fees and costs paid by the Southern Pacific Railroad Company to the officers of the United States in connection with the patenting of the lands involved in Case No. 184, United States vs Southern Pacific Railroad Company.

EXPLANATORY NOTES.

There are included in Case 184 very many tracts that are not railroad lands. The description of all such tracts is *omitted* from this statement.

The tracts, the areas of which are written in *red ink*, are *unsurveyed*, and the area is estimated.

The tracts, the areas of which are written in *black ink*, are *surveyed*, and the areas have been taken from the *Government maps*.

The *surveying fees* stated herein to have been paid March 26th, 1879, were paid by Henry Beard in Washington, D. C. He has paid other *fees for surveying and conveying*, about which he alone can give information.

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

F.

(4-207 a.)

M. N.

W. C. E.

Department of the Interior,

General Land Office,

Washington, D. C., April 18th, 1891.

I, W. M. Stone, acting Commissioner of the General Land Office, do hereby certify that the annexed map is a true and literal exemplification of the one filed in the Department on March 24, 1871, by the President of the Southern Pacific Railroad Company, and transmitted to this office by departmental letter dated April 3, 1871, and described therein as a map designating the route of said railroad (branch line) from Tehachapi Pass, by way of Los Angeles, to the Colorado River.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the seal of this office to be affixed at the City of Washington, on the day and year above written.

(Seal.)

W. M. STONE,

Acting Commissioner of General Land Office.

14514 b-1 m

LIST OF PRIVATE GRANTS FINALLY SURVEYED.

1. San Buenaventura.
2. El Primer Cañon or Rio de los Berendos.
3. La Baranea Colorada.
4. Las Flores.
5. Los Sauicos.
6. Rio de los Molinos.

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7. Bosquejo.
8. Capay.
9. Arroyo Chieo.
10. Farwell (part of J. Williams.)
11. Farwell (part of heirs of J. Potter, dec'd.)
12. Farwell (part of heirs of E. A. Farwell, dec'd.)
13. Jacinto.
14. Llano Seco.
15. Aguas Frias.
16. Esquon.
17. Larkin's Children.
18. Fernandez.
19. Boga.
20. Honeut.
21. Jimeno.
22. Colus.
23. } New Helvetia.
24. }
25. Johnson's Rancho.
26. Sanel.
27. Rincon de Muscalacon.
28. Tzabaco.
29. Soloyome.
30. Mallacomes or Moristul (part of Cook and Ingall's.)
31. Mallacomes or Moristul (part of T. Knight.)
32. Mallacomes or Moristul (part of Jose Santos Berreyesa.)
33. Collayomi.
34. Guenoc.
35. Cañada de Capay.
36. Guesisosi.

37. Rio Jesus Maria.
38. Del Paso.
39. San Juan.
40. Rio de los Americanos.
41. Los Putos.
42. Rio de los Putos.
43. Las Putas.
44. Locattomi.
45. Catacula.
46. La Jota.
47. Carne Humana.
48. Molinos.
49. German.
50. Munix.
51. Bodega.
52. Estero Americano.
53. Cañada de Jonive.
54. Cañada de Pogolimi.
55. Blucher.
56. Roblar de la Miseria.
57. Cotate.
58. Llano de Santa Rosa.
59. Cabexa de Santa Rosa containing the following confirmed parts: Julio Carillós, Meyer and Isham's, Juana de Jesus Mallagh's, John Hendley's and James Eldrige's.
60. Guileos.
61. Caymus.
62. Yajome.
63. Chimiles.
64. Tolenas.
65. Suisun.

66. Tuleay.
67. Part of Entre Napa (Rincon de los Carneros.)
68. Napa containing the following confirmed parts:
Lyman Bartlett's, Wm. H. Osborne's, Julius K. Rose's.
69. Salvador Vallejo's and
70. Otto H. Frank's.
71. Huiehiea.
72. Lot in Sonoma (M. G. Vallejo.)
73. Mission San Francisco Solano (Church property in Sonoma.)
74. Part of Agua Caliento (T. M. Leavenworth.)
75. Part of Agua Caliento (J. Hooker.)
76. Petaluma Rancho.
77. Laguna de San Antonio.
78. } Part of Nicassio (H. W. Haleck.)
79. } Part of Nicassio (H. W. Haleck.)
80. Part of Nicassio (Benjamin R. Buckelew.)
81. Part of Nicassio (James Black.)
82. Part of Nicassio (D. Frink and W. Reynolds.)
83. Soulajule, containing the following confirmed parts: George N. Cornwall's, Lewis D. Watkins, Martin F. Gormley's, Pedro J. Vasquez and Joshua S. Brackett's.
84. Punta de los Reyes.
85. Punta de los Reyes (Sobrante)
86. Tomales y Baulines (R. Gareia.)
87. Tomales y Baulines (B. Phelps.)
88. Las Baulines.
89. Saucelito.
90. Corte Madera del Presidio.
91. Punta de Quentin.

92. Cañada de Herera.
93. San Geronimo.
94. San Pedro, Santa Margarita y las Galinas.
95. Mission San Rafael (Church property.)
96. San José.
97. Novato.
98. Corte Madera de Novato.
99. Olompali.
100. Los Ulpinos.
101. Sanjon de los Moquelumnes.
102. Arroyo Seco (A. Pico.)
103. Rancheria del Rio Estanislao.
104. Thompson's Rancho.
105. Campa de los Franceses.
106. Medanos.
107. Monte del Diablo.
108. Arroyo de las Nueces y Bolbones.
109. La Laguna de los Palos Colorados.
110. Acalanes.
111. La Bocha de la Cañada de Pinole.
112. Las Juntas.
113. Cañada del Hambre.
114. El Pinole.
115. San Pablo.
116. Northern part of San Antonio.
117. Part of San Antonio (A. M. Peralta.)
118. Part of San Antonio (Ignacio Peralta.)
119. San Leandro.
120. San Lorenxo (Barbara Soto.)
121. San Lorenxo (Guillermo Castro.)
122. San Ramon (Leo Norris.)
123. San Ramon (Jose Maria Amador.)

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124. Santa Rita (John Youngh, administrator, etc.)
125. Valle de San José.
126. Arroyo de la Alameda.
127. Potrero de los Cerritos.
128. 3 lots at Mission San José (Church property.)
129. Agua Caliente (F. Higuera.)
130. Las Tularcitos (J. Higuera.)
131. Milipitas.
132. Rincon de los Esteras (Ellen E. White.)
133. Rincon de los Esteras (Rafael Alvisa.)
134. Rincon de los Esteras (E. Perryesa.)
135. Ulistac.
136. Part of Pastoria de las Boregas (M. Murphy.)
137. Posolmi, containing the following confirmed
parts: Walkinshaw's, Campbell's and
Ynigo's.
138. Rincon de San Francisquito (T. and S. Robles.)
139. Rinconada del Arroyo de San Francisquito.
140. San Francisquito (M. C. Valencia de Rodrigues.)
141. El Corte de Madera.
142. Cañada de Raymundo.
143. Las Pulgas.
144. Felix (Domingo Felix.)
145. San Mateo.
146. Buri Buri.
147. Canada de Guadalupe, La Visitation y Rodeo
Viejo.
148. Part of Cañada de Guadalupe y Rodeo Viejo
(W. Pierce.)
149. Rincon de las Salinas.
150. San Miguel.
151. 2 lots at Mission Dolores (Church property.)

152. Suerte en Dolores (Tract of land at Mission Dolores.)
153. Tract of land at Mission Dolores (C. S. de Bernal, et al.)
154. 2 lots in San Francisco (J. P. Leese, et al.)
155. Laguna de la Merced.
156. San Pedro (F. Sanchez.)
157. Carral de Tierra (Heirs of F. G. Palomares.)
158. Carral de Tierra (Tiburcio Vasquez.)
159. Miramontes.
160. Cañada de Verde y Arroyo de Purisima.
161. Part of San Gregorio (M. C. V. de Rodriguez.)
162. Part of San Gregorio (Salvator Castro.)
163. San Antonio or Pescadero.
164. Butano.
165. Punta del Año Nuevo.
166. Purisima Concepcion.
167. Part of San Antonio (Prado Mesa.)
168. Part of San Antonio (W. A. Dana.)
169. Quito.
170. Rinconada de los Gatos.
171. 2 tracts of land in Santa Clara County (Mary S. Bennett.)
172. 2 lots in Santa Clara (Church property.)
173. El Potrero de Santa Clara.
174. Los Coches (Antonio Suñol, et al.)
175. Pala.
176. Yerba Buena.
177. Cañada de Pala.
178. San Felipe de las Animas.
179. Laguna Seca (L. C. Bull, et al.)
180. Santa Teresa (Augustin Bernal, et al.)

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181. San Juan Bautista (J. A. Narvaez.)
182. Los Capitancillos (Charles Fossatt.)
183. San Vicente (Maria Z. Bernal Berreyesa, et al.)
184. Las Uvas.
185. Ojo Agua de la Coche.
186. San Francisco de las Flagas.
187. La Polka.
188. San Ysidro (Maria Clara Ortega.)
189. San Ysidro (Quintin Ortega.)
190. Tequisquita.
191. Lomerias Muertas.
192. Juristae.
193. Las Animas.
194. Solis.
195. Salsipuedes.
196. Bolsa del Pajara.
197. San Andres (Guadalupe Castro et al Exrs.)
198. Los Corralitos.
199. Soquel Augmentation.
200. Aptos.
201. Shoquel.
202. Arroyo del Rodeo.
203. Mission lands of Santa Cruz (Church property.)
204. Tres Ojos de Agua (near Santa Cruz.)
205. Refugio.
206. Cañada del Rincon en el Rio San Lorenzo de
Santa Cruz.
207. La Carbonera.
208. San Augustin.
209. Zayanto.
210. El Pescadero (H. Grimes.)
211. Del Puerto.

212. Orestimba.
213. Las Mariposas.
214. Sanjon de Santa Rita (Francisco Soberanes.)
215. San Luis Gonxaga.
216. Ausaymas and San Felipe.
217. Santa Ana y Quien Sabe.
218. Cienga de los Paicines.
219. San Justo.
220. Tracts in Mission San Bautista (Church property.)
221. Tract of land near San Juan (Patrick Breen.)
222. Las Aromitas y Agua Caliente.
223. Vega del Rio del Pajaro.
224. Bolsa de San Cayetano.
225. Los Carneros (D. Littlejohn.)
226. Cañada de la Carpinteria.
227. Los Carneros (F. A. McDougall, et al.)
228. Los Vergeles.
229. Bolsa Nuevo y Moro Cojo.
230. Bolso de Potrera y Moro Cojo or la Sugrada Familia.
231. Bolsa de Escorpinas.
232. La Natividad.
233. Sausal.
234. Los Gatos or Santa Rita.
235. Rincon de Sanjon.
236. Tract of land in Monterey County (Henry Cocks.)
237. Nacional.
238. Llano de Buena Vista.
239. El Alisal.
240. Alisal.

241. Eneinal y Buena Esperanza.
242. Cualar.
243. Zanjones.
244. Rincon de la Punta del Monte.
245. San Vicente.
246. Los Coches (Maria Soberanes.)
247. Ex-Mission Soledad.
248. 2 Tracts of Mission Soledad (Church property.)
249. Paraje de Sanchez.
250. Guadalupe.
251. Buena Vista (M. Matarin, Atty.)
252. El Toro.
253. City lands of Monterey containing the following surveyed Ranchos within the boundaries:
 254. Rincon de las Salinas.
 255. Noche Buena.
 256. Point Pinos.
 257. Saucito and part of.
 258. Laguna Seca (C. de Munrass.)
 259. El Pescadero (J. G. Gore.)
 260. Carmelo Mission (Church property.)
 261. Cañada de la Segunda.
 262. Tract of land (J. Meadows.)
 263. El Potrero de San Carlos.
 264. San Francisquito (Jose Abrego, et al.)
 265. Los Laurelles.
 266. Los Tularcitos (heirs of R. Gomez.)
 267. El Sur.
 268. Arroyo Seco (J. de la Torre.)
 269. Poso de los Ositos.
 270. San Lorenzo (F. Soberanas.)
 271. San Lorenzo (R. Sanchez.)

272. San Lorenzo (Heirs of Elizabeth T. Randall.)
273. San Bernabe.
274. San Benito.
275. San Lucas.
276. San Bernardo (M. Soberanes).
277. San Antonio Mission (Church property.)
278. San Miguelito.
279. Piojo.
280. Los Ojitos.
281. Cholame.
282. Mission San Miguel (Church property.)
283. Paso de Robles.
284. San Simeon.
285. Santa Rosa.
286. Moro y Cayuecos.
287. San Bernardo (V. Cane.)
288. San Luisito.
289. El Chorro.
290. Cañada de los Osas and Peche y Islay.
291. Laguna (Church property.)
292. Mission lands of San Luis Obispo (Church property.)
293. Lot in San Luis Obispo (Panchita de Santa Fe.)
294. Potrero de San Luis Obispo.
295. Asuncion.
296. Alascadero.
297. Santa Margarita.
298. Huer-Huero.
299. Corral de Piedra.
300. Pismo.
301. Santa Manuela.
302. Arroyo Grande.

303. Huasna.
304. Cuyama.
305. San Emidio.
306. Nipoma.
307. Bolsa de Chamisal.
308. Guadalupe (Diego Olivera, et al.)
309. Punta de la Laguna.
310. Tepasquet.
311. Sisquoc.
312. Tinaquaic.
313. La Zaca.
314. Corral de Quati.
315. Laguna (Octaviano Gutierrez.)
316. Los Alamos.
317. Casmalia.
318. Jesus Maria.
319. Mission la Purisima (Jose Ramon Malo.)
320. San Carlos de Jonata.
321. Mission Lands of Santa Ynez (Church property.)
322. Cañada de los Pinos or College Rancho (Church property.)
323. San Marcos.
324. Tequepis.
325. Lomas de la Purification.
326. Nojoqui.
327. San Julian.
328. Cañada de Salsipuedes (John Keyes.)
329. La Purisima.
330. Lompoc.
331. Punta de Concepcion.
332. Nuestra Señora del Refugio.
333. Cañada del Corral.

334. Los Gos Pueblos.
335. Los Positos y la Calera.
336. Lands belonging to Mission of Santa Barbara
(Church property.)
337. El Rincón (Teodoro Arellanes.)
338. Cañada de San Miguelito.
339. Santa Ana (Ayala et al.)
340. Ojai.
341. Lands belonging to Mission of San Buenaventura
(Church property.)
342. Lot in Mission of San Buenaventura (F. Tico.)
343. San Miguel (R. Olivas and F. Lorenzana.)
344. Santa Poula y Satieoy.
345. Santa Clara del Norte.
346. Las Posas.
347. Calleguas.
348. Guadalasea.
349. El Conejo.
350. Simi.
351. San Francisco (J. Feliz et al.)
352. Ex-Mission San Fernando.
353. Mission San Fernando (Church property.)
354. Tujunga.
355. La Cañada.
356. San Pascual.
357. Santa Anita.
358. Azusa (A. Duarte.)
359. Azusa (H. Dalton.)
360. 361. San Jose and addition of one square league.
362. Addition to Santa Ana del Chino.
363. Santa Ana del Chino.

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- 364. Rincon de la Prea.
- 365. Los Nogales.
- 366. La Puente.
- 367. Tract of land (Juan Pabla de Jesus Courtney.)
- 368. Huerta de Cuaty.
- 369. Tracts at San Gabriel Mission (Church property.)
- 370. Potrero de Filipi Lugo.
- 371. Potrero Grande.
- 372. La Mercer.
- 373. San Antonio (A. M. Lugo.)
- 374. Pueblo lands of the City of Los Angeles.
- 375. La Cienega.
- 376. San Jose de Buenos Ayres.
- 377. La Ballona.
- 378. Los Palos Verdes.
- 379. San Pedro (M. Dominguez, et al.)
- 380. Tajauta.
- 381. La Habra.
- 382. Los Coyotes.
- 383. Los Alamitos.
- 384. La Bolsa Chica.
- 385. Las Bolsas.
- 386. Santiago de Santa Ana.
- 387. Cañon de Santa Ana.
- 388. El Rincon.
- 389. San Bernardino.
- 390. San Joaquin.
- 391. Cañada de Los Alisos.
- 392. Trabuco.
- 393. Mission Vieja or La Paz.
- 394. Mission San Juan Capistrano (Church property.)
- 395. Potreros de San Juan Capistrano.

396. Temecula.
397. Pauba.
398. Guojome.
399. Ex-Mission San Luis Rey (Church property.)
400. Agua Hedionda.
401. Los Encenitos.
402. San Bernardo (M. A. Snook.)
403. Rincon del Diablo.
404. San Jose del Valle.
405. Valle de San Felipe.
406. El Cajon.
407. Mission San Diego (Church property).
408. Pueblo lands of San Diego.
409. La Nacion.
410. Jamacho.
411. Otay.
412. San Miguel (Widow and Heirs of M. West, deed.)
413. Part of Napa (N. Coombs).
414. Part of Entre Napa (N. Coombs).
415. Part of Entre Napa (R. L. Kilburn).
416. Los Meganos.
417. Cañada de los Baqueros.
418. El Pescadero (A. M. Pico et al.).
419. Lot in Mission Dolores (F. de Haro).
420. Two 50 vara lots in Mission Dolores (F. de Haro.)
421. Part of Pastoria de las Boregas (M. T. Peralta de Castro.)
422. Tract of land near Santa Clara (James Enright).
423. Panoche Grande, survey not final.
424. Lands belonging to Missn. La Purisima (Church property).

425. La Coleta.
426. Island Santa Rosa.
427. Island Santa Cruz.
428. Santa Gertrudes.
429. La Liebre.
430. El Tejon.
431. Castac.
432. U. S. Reservation at Benicia.
433. *U. S. Reservation No. 7.*
434. Pastoria de las Boregas (Castro).
435. Cañada Larga.
436. Laguna Tache.
437. Yo Semite.
438. Big Tree.
439. Ex-Mission San Buenaventura.
440. Capitaneillos (Guadalupe Mining Co.)
441. Las Salinas.
442. Cienega del Gabilan.
443. Santa Ysabel.
444. Cueumonga.
445. Bolsa de San Felipe.
446. Guejito.
447. San Francisquito.
448. Real de los Aguilas.
449. Aguajito.
450. San Miguelito (Abila).
451. El Tuchó.
452. Tract of land in Monterey Co. (Castro).
453. Los Alamos y Aqua Calienta.
454. Santa Catalina Island.
455. Ex-Mission San Jose.
456. Yokaye.

- 457. Cosumne.
- 458. Cañada del Hambrey Las Bolsas.
- 459. Las Positas.
- 460. Aqua Puerca y las Trancas.
- 461. Milpitas (Pastor).
- 462. El Sobrante de San Jacinto.
- 463. San Vicente (Escarillo).
- 464. Pt. San Jose Military Reservation.
- 465. Presidio.

Indian Reservations:

- A. Nome Lackee.
- B. Nome Cult.
- D. Smith River.

Explanation { Surveys executed and returned to this Office.
 S. S. S. S. Townships subdivided into Sections and returns made to this Office.

Scale 18 miles to an inch.

L. UPSON,
 U. S. Survr. Genl., Cal.

Surveyor General's Office,
 San Francisco, California, June 30th, 1863.

Exhibit No. 36, is a Letter from Commissioner to Register and Receiver, to be substituted, from the record in Case 68. (See p. 104 this record.)

* Page 104 corresponds to page 776 of this transcript.)

Ex. No. 37.

SOUTHERN PACIFIC RAILROAD COMPANY, LAND DEPARTMENT.

No. . . .

ARTICLE OF AGREEMENT, made at San Francisco, California, this day of A. D. 18....., between the Southern Pacific Railroad Company, party of the first part, and of County, State of party of the second part.

The said party of the first part, in consideration of the agreements of the said part.....of the second part herein contained, hereby agrees to sell unto the said part.....of the second part, the following tract... of land, situate in the County of State of California, to-wit: and known and designated on the public surveys of the United States as.....

of section No , in Township , of Range , Base and Meridian, containing -100 acres, for the sum of -100 dollars, United States Gold Coin, of which sum the said part of the second part ha. this day paid the sum of -100 dollars, with, -100 dollars, one year's interest on the remainder of said purchase money; the remainder of said principal sum, amounting to -100 dollars, United States Gold Coin, with interest thereon annually in advance, at the rate of seven per cent. per annum, to be paid by the said part of the second part on or before the day of , 18.....

And the said party of the first part hereby further agrees that upon the punctual payment of said purchase money and interest, and the strict and faithful performance by the part..... of the second part, legal representatives or assigns, of all the agreements herein contained, then the said party of the first part will cause to be made and executed to the said part of the second part, heirs and assigns, upon request and surrender of this contract, a deed of grant, bargain and sale, for the conveyance of said premises, reserving, however, for railroad purposes, a strip of land one hundred feet wide, lying equally on each side of the tract of the railroad of said Company, and all branch railroads now or hereafter constructed thereon, and the right to use all water needed for the operating and repair of said railroads, and subject also to the reservation and condition, that the said purchaser, heirs and assigns, shall erect and maintain good and sufficient fences on both sides of said strip or strips of land, and also reserving all claim of the United States to the same as mineral land.

And the said part..... of the second part hereby
agrees to pay to the said Southern Pacific Railroad
Company, its successors or assigns, the said sum of
..... -100 dollars, United States Gold Coin of
the present standard value, with interest thereon,
annually in advance, at the rate of seven per cent. per
annum, at its office in the city of San Francisco, on or
before the day of, 18.., both principal
and interest payable in United States Gold Coin of

the present standard of value, and until the full payment of said purchase money and interest, will permit no strip or waste to be made on said premises, and no wood or growing trees to be cut thereon, except for necessary fuel for the family of the legal occupant under this contract, and for the erection of buildings or fences, without the previous written consent of the said party of the first part. And if the said part..... of the second part shall fail to make punctually any of said payments of interest or principal, or shall fail to comply strictly with any of the stipulations of this contract, then the said party of the first part, its successors or assigns, shall have the right to enter upon and take possession of the said premises, with all the improvements thereon.

It is further mutually agreed and understood, that the said part.... of the second part shall have the immediate possession and enjoyment of said premises, and if the same be in the adverse possession of a third party, the right to use at his own cost and charge the name of the party of the first part to recover the same by action. And that in consideration of such possession and enjoyment he will pay all taxes and assessments that may be, at any time, imposed upon said premises. And it is further agreed that, should said part..... of the second part fail to pay such taxes or assessments, or any part thereof, at any time when the same shall become due, the said party of the first part may pay the same, and add the amount thereof to the price to be paid for said premises, and such taxes or assessments, with interest at the rate of seven per cent. per annum, shall be paid

before said part..... of the second part shall be entitled to a conveyance of said premises.

The part..... of the second part hereby agrees to pay \$3.00 for expenses of the acknowledgments to the deed that shall be issued on this contract.

This contract shall not be assignable, except upon the consent of said party of the first part, and the written promise of the assignee..... to perform all the undertakings and promises of the said part..... of the second part as above set forth.

IN TESTIMONY WHEREOF, the said party of the first part has caused these presents to be signed in duplicate by its Secretary and Land Agent, and the said part..... of the second part ha... signed name.... hereto.

.....Secretary.Land Agent.
.....(Seal.)
.....(Seal.)

....., the part..... of the second part in the within Contract, No....., for and in consideration of..... Dollars, to, in hand paid, do..... hereby sell, assign and transfer allright, title, interest and claim in and to the within described tract... or parcel... of land, and the within Contract, No, unto,
..... heirs and assigns forever, subject to the stipulations and conditions therein contained, which are to be performed by said assignee.

Given under hand... and seal..., this..... day of....., A. D. 18.....

.....(Seal.)
.....(Seal.)

STATE OF CALIFORNIA, }
County of } ss.

On this day of , in the year
one thousand eight hundred and, before,
a in and for said county, personally appeared
..... known to me to be the person... whose
name subscribed to the above instrument, and
acknowledged to me that executed the same.

In WITNESS WHEREOF, I have hereunto set my hand
and affixed my official seal, the day and year in this
certificate first above written.

.....
Notary Public.

On this day of , 18.., in consider-
ation of the above and foregoing assignment to me,
..... hereby agree with the assignor therein named,
and with the Southern Pacific Railroad Company, to
do and perform all the stipulations and conditions in
the within contract, required to be done and performed
by the part ... thereto of the second part.

..... (Seal)

..... (Seal)

P. O. Address,

—

San Francisco, Cal., 18..

The Southern Pacific Railroad Company hereby
consents to the above assignment to

.....
By

Its Land Agent.

[Endorsed]: No. Contract for a Deed. Southern Pacific R. R. Company to Dated 18.... Interest, \$....., due on the day of of each year. Remainder of principal, \$....., due on the day of , 189.... Defendants' Exhibit before the Special Examiner, No. 37. Stephen Potter, Special Examiner. Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

G. 274. (99-29-88-200.)

No. 100000000

SOUTHERN PACIFIC RAILROAD COMPANY.

Land Department.

The Southern Pacific Railroad Company, having this day sold to of County, State of the following described tract of land, situate in the County of State of California, to-wit:—

of Section No. in Township..... of Range,
..... Base and Meridian, containing,
according to the United States surveys,
..... -100 acres, and the said.....
having paid the sum of -100 Dollars
United States Coin, being the FULL amount of the pur-
chase money therefor, the said Southern Pacific Rail-
road Company hereby agrees to execute and deliver
to..... h, heirs and assigns, within

thirty days after demand, and upon the surrender of this agreement, a deed of grant, bargain and sale, for the conveyance of said premises to the said....., heirs and assigns (reserving, however, to said Company a strip of land one hundred feet wide, lying equally on each side of the track of its railroad, and all branch railroads now or hereafter constructed over said land, and the right to use all water needed to operate and repair said railroads, and subject also to the reservation and condition that the said purchaser....., heirs and assigns, shall erect and maintain good and sufficient fences on both sides of the said strip and strips of land; and also reserving all claim of the United States to the same as mineral land), and in the meantime the said purchaser may enter into the possession and occupancy of said premises.

In TESTIMONY WHEREOF, the said Company has caused this agreement to be signed by its Secretary and Land Agent, at San Francisco, California, this day of A. D. 188....

.....
Land Agent S. P. R. R. Co.

.....
Secretary S. P. R. R. Co.

Ex. No. 38.

..... the within purchaser.., for and in consideration of dollars, to in hand paid, do hereby sell, assign and transfer all right, title, interest and claim in and to the within described tract or parcel of land, and the

within contract No....., unto heirs and assigns forever, subject to the stipulations and conditions therein contained, which are to be performed by the said assignee.

Given under hand and seal, this day of
..... A. D. 188

..... (Seal)

..... (Seal)

STATE OF CALIFORNIA, } ss
..... County of }

On this day of in the year one thousand eight hundred and eighty....., before me a..... in and for said County, personally appeared known to me to be the person whose name subscribed to the above instrument, and acknowledged to me that executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

[Endorsed]: No. Full Paid Contract for a Deed.
Southern Pacific R. R. Company to
Defendants' Exhibit before the Special Examiner,
No. 38. Stephen Potter, Special Examiner. Filed
Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Br. & R. LIST NO. 1.

Lands selected by the "Southern Pacific Railroad Company" in the "Los Angeles Land District," State of California, Granted Limits.

Ex. No. 39.

Office of the Southern Pacific Railroad Company,
San Francisco, California, January 19th, 1876.

STATE OF CALIFORNIA, }
City and County of San Francisco. }

I, Joseph L. Willett, Secretary of the Southern Pacific Railroad Company, do hereby certify that Benjamin B. Redding was appointed Land Agent of the said Southern Pacific Railroad Company by the Board of Directors of said company, at a regular meeting, held on the third (3rd) day of July, A. D. 1871, and that since that time he has been continuously, and is now, the Land Agent of the said Southern Pacific Railroad Company.

In TESTIMONY WHEREOF, I have hereunto set my hand and affixed the corporate seal of the said Southern Pacific Railroad Company, the nineteenth day of January, A. D. 1876.

(Corporate seal) JOSEPH L. WILLETT,
Secretary of the Southern Pacific Railroad Company.

LIST OF LANDS

In the Los Angeles Land District, California, selected by the Southern Pacific Railroad Company of California.

THE UNDERSIGNED, the duly authorized Land Agent of the Southern Pacific Railroad Company of California, under and by virtue of the 23d section of the

Act of Congress, approved March 3, 1871, entitled "An Act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," and under and by virtue of the Act of Congress, approved July 27, 1866, entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," and the further Aet, approved July 25, 1868, entitled "An Act to extend the time for the construction of the Southern Pacific Railroad in the State of California," and the Joint Resolution of Congress, approved June 28, 1870, "Concerning the Southern Pacific Railroad of California," and under and in pursuance of the rules and regulations prescribed by the Commissioner of the General Land Office, hereby makes and files the following list of selections of public lands claimed by the said company as inuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said Acts of Congress, and the location of the line of route of the railroad and telegraph of said company; being in part for the first (1st) section (fifty (50) miles of the same, commencing at a point in N. W. $\frac{1}{4}$, Sec. 3, T. 2 N., R. 15 W., San Bernardino Base & Meridian, and ending at the termination of the 50th mile therefrom at a point in N. E. $\frac{1}{4}$, Sec. 27, T. 1 S., R. 9 W., San Berdo. B. & M., which said section of road and telegraph has been duly accepted by the President of the United States, as provided in the aforesaid Acts and Joint Resolution of Congress. The selections being particularly described as follows:

BENJAMIN B. REDDING,

Land Agent of the Southern Pacific Railroad Co.

Railroad List. North of Base Line, and West of San Bernardino Principal Meridian.

No.	Part of Section.	No. of Section.	No. of Township.	No. of Range.	Area.		Fees of Register and Receiver.
					Acre.	Ro.	
*Lot 1		1	2 N	15 W	37 72		50
*Lot 2		1	"	"	36 30		50
*Lot 3		1	"	"	39 06		50
*Lot 4		1	"	"	28 49		50
†Lot 5		1	"	"	44 34		50
†Lot 6		1	"	"	44 18		50
‡E $\frac{1}{2}$ of NE $\frac{1}{4}$		25	3 N	15 W	80 00		1 00
‡Lot 2		25	"	"	34 13		50
‡Lot 3		25	"	"	29 96		50
All of fract.		1	4 N	13 W	632 60		8 00
NW $\frac{1}{4}$ of SW $\frac{1}{4}$		11	"	"	40 00		50
SW $\frac{1}{4}$ of SE $\frac{1}{4}$		11	"	"	40 00		50
E $\frac{1}{2}$		13	"	"	320 00		4 00
S $\frac{1}{2}$ of NE $\frac{1}{4}$		15	"	"	80 00		1 00
Frac. SW $\frac{1}{4}$		31	5 N	12 W	164 41		2 00
S $\frac{1}{2}$		25	5 N	13 W	320 00		4 00
All of		35	"	"	640 00		8 00

*Not patented—Suspended. Supposed to be mineral. See Beard's letter April 3, 1876.

†Not patented—Suspended. Supposed to be mineral. See Beard's letter Apl. 3, '76.

‡Not patented—Held to be mineral "prima facie." See Beard's letter, dated Apl. 3, '76.

STATE OF CALIFORNIA,

City and County of San Francisco. } ss.

I, Benjamin B. Redding, being duly sworn, depose and say: that I am the Land Agent of the Southern Pacific Railroad Company; that the foregoing list of lands which I hereby select is a correct list of a portion of the public lands claimed by the said Southern Pacific Railroad Company as inuring to it, to aid in the construction of the railroad of said company, from San Fernando to Spadra, for which a grant of lands was made by the Acts of Congress, approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, as aforesaid; that the said lands are vacant, unappropriated, and are not interdicted mineral nor reserved lands, and are of the character contemplated by the grant, being within the limits of twenty (20) miles on each side of the line of route for a continuous distance of fifty (50) miles, being for the first (1st) section of said road, starting from a point in the N.W. $\frac{1}{4}$, Sec. 3, T. 2 N., R. 15 W., San Bernardino Base and Meridian, and ending at the termination of the 50th mile therefrom, at a point in the N. E. $\frac{1}{4}$, Sec. 27, T. 1 S., R. 9 W., San Bernardino Base and Meridian.

(Seal)

BENJAMIN B. REDDING.

Sworn to and subscribed before me this twentieth (20th) day of January, 1876.

(Notarial Seal)

CHARLES J. TORBERT,

Notary Public in and for the City and County
of San Francisco, State of California.

United States Land Office,

Los Angeles, Cal., Jany. 28, 1876.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Southern Pacific Railroad Company, under the grant to the said Southern Pacific Railroad Company, by Acts of Congress, approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, above mentioned, and selected by Benjamin B. Redding, the duly authorized agent; and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limit of twenty (20) miles on each side; and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands, nor claimed as swamp lands; nor is there any homestead, pre-emption, State, or other valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows an assessment of the fees payable to us allowed by the Act of Congress, approved July 1, 1864, and contemplated by the circular of instructions dated January 24, 1867, addressed by the Commissioner of the General Land Office to Registers and Receivers of the United States Land Offices; and that the said company have paid to the undersigned, the Receiver, the full sum of

one hundred and twenty-nine (\$129.00) dollars, in full payment and discharge of said fees.

ALFRED JAMES,

Register.

J. W. HAVERSTICK,

Receiver.

UNITED STATES, }
vs. } No. 184.
S. P. R. R. Co., et al. }

I hereby certify that I have compared the annexed copy of Defendants' Exhibit before the Special Examiner, No. 39, with the original on file in the office of the Land Department of the Southern Pacific R. R. Co., and find it to be a full, true and correct copy thereof, so far as it involves the lands in suit, and omitting lands that are not in issue.

STEPHEN POTTER,

Special Examiner.

San Francisco, October 13th, 1893.

[Endorsed]: (Marked) Defendants' Exhibit before the Special Examiner, No. 39. Stephen Potter, Special Examiner. Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Br. & R.

LIST NO. 2.

Lands selected by the Southern Pacific Railroad Company in the Los Angeles Land District, State of California.

Granted Limits.

Ex. No. 40.

1288 SOUTHERN PACIFIC RAILROAD CO., ET AL.,

G. 158. (6-6-93-250.)

Office of the

Southern Pacific Railroad Company,
San Francisco, California, June 26th, 1877.

STATE OF CALIFORNIA, }
City and County of San Francisco. } ss.

I, Joseph L. Willecutt, Secretary of the Southern Pacific Railroad Company, do hereby certify that Jerome Madden was appointed Land Agent of the said Southern Pacific Railroad Company by the Board of Directors of said company, at a meeting held on the tenth (10th) day of May, A. D. 1876, and that since that time he has been continuously, and is now, the Land Agent of the said Southern Pacific Railroad Company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the corporate seal of the said Southern Pacific Railroad Company, the 26th day of June, A. D. 1877.

(Corporate Seal.) JOSEPH L. WILLCUTT,
Secretary of the Southern Pacific Railroad Company.

LIST OF LANDS

In the Los Angeles Land District, California, selected by the Southern Pacific Railroad Company of California.

THE UNDERSIGNED, the duly authorized Land Agent of the Southern Pacific Railroad Company of California, under and by virtue of the 23d section of the Act of Congress, approved March 3, 1871, entitled "An Act to incorporate the Texas Pacific Railroad Com-

pany, and to aid in the construction of its road, and for other purposes," and under and by virtue of the Act of Congress, approved July 27, 1866, entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," and the further Act, approved July 25, 1868, entitled "An Act to extend the time for the construction of the Southern Pacific Railroad in the State of California," and the Joint Resolution of Congress, approved June 28, 1870, "Concerning the Southern Pacific Railroad of California," and under and in pursuance of the rules and regulations prescribed by the Commissioner of the General Land Office, hereby makes and files the following list of selections of public lands claimed by the said company as inuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said Acts of Congress, and the location of the line of route of the railroad and telegraph of said company; being in part for the first, second and third fifty mile sections (one hundred and fifty (150) miles) of the same, commencing at a point in the N. W. $\frac{1}{4}$, Sec. 3, T. 2 N., R. 15 W., San Bernardino Base & Meridian, and ending at a point in S. W. $\frac{1}{4}$, Sec. 24, T. 5 S., R. 7 E. (San Bernardino Base & Meridian), which said sections of road and telegraph have been duly accepted by the President of the United States, as provided in the aforesaid Acts and Joint Resolution of Congress. The selections being particularly described as follows:

JEROME MADDEN,
Land Agent of the Southern Pacific
Railroad Company.

G. 130. (4-5-92-500.)

Railroad List.

North of Base Line, and West of San Bernardino,
Principal Meridian.

No.	Part of Section	No. of Section	No. of Town.	No. of Range	Area		Fees of Register and Receiver
					Acres	100	
	All of fractl.	17	2 N	13W	639 98		8 00
	All of fractl.	21	"	"	367 68		4 50
	All of	25	"	"	640 00		8 00
	E $\frac{1}{2}$ of NE $\frac{1}{4}$	27	"	"	80 00		1 00
	Lots 1, 2, & 3	"	"	"	76 32		1 00
	N $\frac{1}{2}$ of NE $\frac{1}{4}$	35	"	"	80 00		1 00
	Lots 1, 2, 3, 4	"	"	"	101 51		1 50
	Lots 1, 2, 3 & 4	21	2 N	14W	101 68		1 50
	S $\frac{1}{2}$ of SE $\frac{1}{4}$	"	"	"	80 00		1 00
	S $\frac{1}{2}$ of SW $\frac{1}{4}$	"	"	"	80 00		1 00
	Lots 1 & 2	27	"	"	79 94		1 00
	NW $\frac{1}{4}$ of SW $\frac{1}{4}$	"	"	"	40 00		50
	E $\frac{1}{2}$ of NE $\frac{1}{4}$	29	"	"	80 00		1 00
	Lots 1, 2, 3 & 4	"	"	"	86 48		1 00
	All	33	"	"	640 00		8 00

STATE OF CALIFORNIA,
City and County of San Francisco. } ss.

I, Jerome Madden, being duly sworn, depose and say: That I am the Land Agent of the Southern Pacific Railroad Company; that the foregoing list of lands which I hereby select is a correct list of a por-

tion of the public lands claimed by the said Southern Pacific Railroad Company as inuring to it, to aid in the construction of the railroad of said company from San Fernando to Indian Wells, for which a grant of lands was made by the Act of Congress approved March 3, 1871; July 27, 1866; July 25, 1868, and June 28, 1870; as aforesaid; that the said lands are vacant; unappropriated, and are not interdicted mineral nor reserved lands, and are of the character contemplated by the grant, being within the limits of twenty (20) miles on each side of the line of route for a continuous distance of one hundred and fifty (150) miles, being for the first, second and third sections of said road, starting from a point in the N.W. $\frac{1}{4}$, Sec. 3, T. 2 N., R. 15 W., San Bernardino Base and Meridian, and ending at the termination of the one hundred and fiftieth mile therefrom, at a point in S.W. $\frac{1}{4}$ of Sec. 24, T. 5 S., R. 7 E., San Bernardino Base and Meridian.

(Seal)

JEROME MADDEN,

Sworn to and subscribed before me this
twenty-seventh (27th) day of June, 1877.

(Seal of the
12th District Court
of the City
and County
of San Fran-
cisco, Cali-
fornia.)

THOS. H. REYNOLDS,
County Clerk of the City and County of
San Francisco, California, and ex-officio
Clerk of the 12th District Court
thereof, the same being a court of
record.

UNITED STATES,
vs.
S P. R. R. Co., ET AL., } No. 184.

I hereby certify that I have compared the annexed copy of Defendants' Exhibit before the Special Examiner, No. 40, with the original on file in the office of the Land Department of the Southern Pacific R. R. Co., and find it to be a full, true and correct copy thereof, so far as it involves the lands in suit, and omitting lands that are not in issue.

STEPHEN POTTER,
Special Examiner.

San Francisco, October 13th, 1893.

United States Land Office,
Los Angeles, Cal., July 2d, 1877.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Southern Pacific Railroad Company, under the grant to the said Southern Pacific Railroad Company, by Acts of Congress, approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, above mentioned, and selected by Jerome Madden, the duly authorized agent; and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the

limit of twenty (20) miles on each side; and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands nor claimed as swamp lands; nor is there any homestead, pre-emption, State or other valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows an assessment of the fees payable to us allowed by the Act of Congress, approved July 1, 1864, and contemplated by the circular instructions dated January 24, 1867, addressed by the Commissioner of the General Land Office to Registers and Receivers of the United States Land Offices; and that the said company have paid to the undersigned, the Receiver, the full sum of seven hundred and forty-eight 50 (\$1,748 50) dollars, in full payment and discharge of said fees.

ALFRED JAMES, Register.

J. W. HAVERSTICK, Receiver.

[Endorsed]: (Marked) Defendants' Exhibit before the Special Examiner, No. 40. Stephen Potter, Special Examiner. Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Br. & R.

LIST NO. 4.

Lands selected by the Southern Pacific Railroad Company in the Los Angeles Land District, State of California.

Granted Limits.

Ex. No. 41.

G. 158. (6-6-93-250.)

Office of the
Southern Pacific Railroad Compay.
San Francisco, California.

I, Joseph L. Willeutt, Secretary of the Southern Pacific Railroad Company, do hereby certify that Jerome Madden was appointed Land Agent of the said Southern Pacific Railroad Company by the Board of Directors of said company, at a meeting held on the tenth (10th) day of May, A. D. 1876, and that since that time he has been continuously, and is now, the Land Agent of the said Southern Pacific Railroad Company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the corporate seal of the said Southern Pacific Railroad Company, the eleventh day of July, A. D. 1882.

(Corporate seal) JOSEPH L. WILLCUTT,

Secretary of the Southern Pacific
Railroad Company.

LIST OF LANDS

In the Los Angeles Land District, California, selected by the Southern Pacific Railroad Company, of California.

The undersigned, the duly authorized land agent of the Southern Pacific Railroad Company of California, under and by virtue of the 23d Section of the Act of Congress, approved March 3, 1871, entitled, "An Act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for

other purposes," and under and by virtue of the Act of Congress, approved July 27, 1866, entitled, "An Act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," and the further Act, approved July 25, 1868, entitled, "An Act to extend the time for the construction of the Southern Pacific Railroad in the State of California," and the Joint Resolution of Congress, approved June 28, 1870, "Concerning the Southern Pacific Railroad of California," and under and in pursuance of the rules and regulations prescribed by the Commissioner of the General Land Office, hereby makes and files the following list of selections of public lands claimed by said Company as inuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said Acts of Congress, and the location of the line of route of the railroad and telegraph of said company; being in part for the First (1st), Second (2d), and Fourth (4th) Sections (one hundred and seventy-eight 59-100 (178 59-100) miles of the same, commencing at a point in the NE. $\frac{1}{4}$ of Sec. 17, Tp. 11 N., R. 12 W., S. B. B. & M., and ending at a point in SW. $\frac{1}{4}$ of Sec. 4, Tp. 3 S., R. 1 W., S. B. B. & M., which said sections of road and telegraph have been duly accepted by the President of the United States, as provided in the aforesaid acts and Joint Resolution of Congress. The selections being particularly described as follows:

JEROME MADDEN,

Land Agent of the Southern Pacific Railroad
Company.

G. 130. (4-5-92-500.)

Railroad List.

North of Base Line, and West of San Bernardino
Principal Meridian.

PART OF SECTION	NO. OF SECTION	No. of Town.	No. of Range	AREA, ACRES		Fees of Register and Receiver.
					100	
Lots 1 & 2, E $\frac{1}{2}$ of SW $\frac{1}{4}$ and SE $\frac{1}{4}$	31	2 N 12W		321 00		4 00
All Fract.	21	3 N 15W		598 76		7 50

STATE OF CALIFORNIA,
City and County of San Francisco. } ss.

I, Jerome Madden, being duly sworn, depose and say: That I am the Land Agent of the Southern Pacific Railroad Company; that the foregoing list of lands, which I hereby select, is a correct list of a portion of the public lands claimed by the said Southern Pacific Railroad Company as inuring to it, to aid in the construction of the railroad of said company from Mojave to San Gorgonio Summit, for which a grant of lands was made by the Acts of Congress approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, as aforesaid; that the said lands are vacant, unappropriated, and are not interdicted mineral nor reserved lands, and are of the character contemplated by the grant, being within the limits of twenty (20) miles on each side of the line of route for a continuous distance of one hundred and seventy-eight 59-100 (178 59-100) miles, being for the first, second

and fourth sections of said road, starting from a point in N. E. $\frac{1}{4}$ of Sec. 17, Tp. 11 N., R. 12 W., S. B. B. & M., and ending at a point in S. W. $\frac{1}{4}$ of Sec. 4, T. 3 S., R. 1 W., S. B. B. & M.

JEROME MADDEN (Seal.)

Sworn to and subscribed before me this twelfth (12th) day of July, 1882.

(Seal of the
Superior Court
of the City and
County of San
Francisco, Cal-
ifornia.)

DAVID WILDER,
County Clerk of the City and
County of San Francisco, Calif-
ornia, and ex-officio Clerk of the
Superior Court thereof, the same
being a court of record.

United States Land Office,

Los Angeles, Cal. July 14th, 1882.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Southern Pacific Railroad Company, under the grant to the said Southern Pacific Railroad Company, by Acts of Congress, approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, above mentioned, and selected by Jerome Madden, the duly authorized agent; and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limit of twenty (20) miles on each side; and that the same

are not, nor is any part thereof, returned and denominated as mineral land or lands, nor claimed as swamp lands; nor is there any homestead, pre-emption, State, or other valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows an assessment of the fees payable to us allowed by the Act of Congress, approved July 1, 1864, and contemplated by the circular of instructions dated January 24, 1867, addressed by the Commissioner of the General Land Office to Registers and Receivers of the United States Land Offices; and that the said company have paid to the undersigned, the Receiver, the full sum of one hundred and ninety-five (\$195.00) in full payment and discharge of said fees.

CHAS. R. JOHNSON, Register.
J. W. HAVERSTICK, Receiver.

UNITED STATES, }
S. P. R. R. Co., et al. } No. 184.

I hereby certify that I have compared the annexed copy of Defendants' Exhibit before the Special Examiner, No. 41, with the original on file in the office of the Land Department of the Southern Pacific R. R. Co., and find it to be a full, true and correct thereof, so far as it involves the lands in suit, and omitting lands that are not in issue.

STEPHEN POTTER,
Special Examiner.

San Francisco, October 13th, 1893.

[Endorsed]: (Marked) Defendants' Exhibit before the Special Examiner, No. 41, Stephen Potter, Special Examiner. Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Br. & R.

United States Land Office,
Los Angeles, California, May 25, 1883.

LIST NO. 11.

Lands selected by the Southern Pacific Railroad Company.

Granted Limits.

Ex. No. 42.

G. 158. (6-6-93-250.)

Office of the Southern Pacific Railroad Company.
San Francisco, California.

I, Joseph L. Willcutt, Secretary of the Southern Pacific Railroad Company, do hereby certify that Jerome Madden was appointed Land Agent of the said Southern Pacific Railroad Company by the Board of Directors of said company, at a meeting held on the tenth (10th) day of May, A. D. 1876, and that since that time he has been continuously, and is now, the Land Agent of the said Southern Pacific Railroad Company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Corporate Seal of the said Southern Pacific Railroad Company, the 10th day of May, A. D. 1883.

(Corporate Seal) JOSEPH L. WILLCUTT,
Secretary of the Southern Pacific Railroad
Company.

LIST OF LANDS

In the Los Angeles Land District, California, selected by the Southern Pacific Railroad Company, of California.

THE UNDERSIGNED, the duly authorized Land Agent of the Southern Pacific Railroad Company, of California, under and by virtue of the 23d Section of the Act of Congress, approved March 3, 1871, entitled, "An Act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," and under and by virtue of the Act of Congress, approved July 27, 1866, entitled, "An Act granting lands to aid in the construction of a Railroad and Telegraph line from the States of Missouri and Arkansas to the Pacific Coast," and the further Act, approved July 25, 1868, entitled, "An Act to extend the time for the construction of the Southern Pacific Railroad in the State of California," and the Joint Resolution of Congress, approved June 28, 1870, "Concerning the Southern Pacific Railroad of California," and under and in pursuance of the rules and regulations prescribed by the Commissioner of the General Land Office, hereby makes and files the following list of selections of public lands, claimed by the said Company as inuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said Acts of Congress, and the location of the line of route of the railroad and telegraph of said Company; being in part for the 1st, 2nd, 3d and 4th Sections (two hundred and twenty-eight 59-100 (228 59-100) miles) of the same, commencing at a point in N.

E. $\frac{1}{4}$, Sec. 17, T. 11 N., R. 12 W., S. B. B. & M. and ending at a point in S. W. $\frac{1}{4}$, Sec. 24, T. 5 S., R. 7 E., S. B. B. & M., which said sections of road and telegraph have been duly accepted by the President of the United States, as provided in the aforesaid Acts and Joint Resolution of Congress. The selections being particularly described as follows:

JEROME MADDEN,
Land Agent of the Southern Pacific Railroad
Company.

G. 130. (4-5-92-500.)

Railroad List. North of Base Line and West of San Bernardino Principal Meridian.

No.	PART OF SECTION	NO. OF SECTION	No. of Town.	No. of Range	AREA		Fees of Register and Receiver
					ACRES	10 0	
	Lots 1, 2, 3, 4; N.						
	$\frac{1}{2}$ N $\frac{1}{2}$ of SE $\frac{1}{4}$;						
	N $\frac{1}{2}$ of SW $\frac{1}{4}$	23 3 N. 15 W.	527	48	6	50	
	NE $\frac{1}{4}$; Lot 3, SE $\frac{1}{4}$ of NW $\frac{1}{4}$	19 4 N. 18 W.	239	77	3	00	
	NE $\frac{1}{4}$ of NE $\frac{1}{4}$; S $\frac{1}{2}$ of NE $\frac{1}{4}$ Lot 1; frac'l S $\frac{1}{2}$	31	"	"	480	11	6 00

STATE OF CALIFORNIA, }
City and County of San Francisco. } ss.

I, Jerome Madden, being duly sworn, depose and say: That I am the Land Agent of the Southern Pacific Railroad Company; that the foregoing list of

lands, which I hereby select, is a correct list of a portion of the public lands claimed by the said Southern Pacific Railroad Company as inuring to it, to aid in the construction of the railroad of said Company from Mojave to Indian Wells, for which a grant of land was made by the Acts of Congress approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, as aforesaid; that the said lands are vacant, unappropriated, and are not interdicted mineral nor reserved lands, and are of the character contemplated by the grant, being within the limits of twenty (20) miles on each side of the line of route for a continuous distance of two hundred and twenty-eight 59-100 (228.59) miles, being for the first (1st), second (2d), third (3d), and fourth (4th) sections of said road, starting from a point in N. E. $\frac{1}{4}$, Sec. 17, T. 11 N., R. 12 W., S. B. B. & M., and ending at a point in S. W. $\frac{1}{4}$, Sec. 24, T. 5 S., R. 7 E., S. B. B. & M.

(Seal.)

JEROME MADDEN.

Sworn to and subscribed before me this fourteenth day of May, 1883.

WILLIAM T. SESNON,

(Seal of the Superior Court of the City & County of San Francisco, California, and ex-officio Clerk of the Superior Court thereof, the same being a court of record.

United States Land Office,
Los Angeles, Cal., May 25th, 1883.

We hereby certify that we have carefully and critically examined the foregoing lists of lands claimed by

the Southern Pacific Railroad Company, under the grant to the said Southern Pacific Railroad Company, by Acts of Congress, approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, above mentioned, and selected by Jerome Madden, the duly authorized agent; and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limit of twenty (20) miles on each side; and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands, nor claimed as swamp lands; nor is there any homestead, pre-emption, State or other valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows an assessment of the fees payable to us allowed by the Act of Congress, approved July 1, 1864, and contemplated by the circular of instructions dated January 24, 1867, addressed by the Commissioner of the General Land Office to Registers and Receivers of the United States Land Offices, and that the said Company have paid to the undersigned, the Receiver, the full sum of three hundred and seventeen dollars (\$317 00-100) in full payment and discharge of said fees.

CHAS. R. JOHNSON, Register.
J. W. HAVERSTICK, Receiver.

United States Surveyor-General's Office,

San Francisco, California, May 15, 1883.

I, W. H. Brown, Surveyor-General for the United States, in and for the State of California, hereby report and certify that the Southern Pacific Railroad Company has this day filed with me at San Francisco, a duplicate certificate of deposit No. 268, dated May 15th, 1883, to the credit of the United States, showing that the sum of \$854.67 has been deposited as cost of survey, and \$284.89 for office work, and that the said sums are the correct amount of the cost of survey and office work for the lands mentioned and described in the list of lands hereto annexed, to the extent of said list.

Survey.....	\$854 67
Office Work.....	284 89
<hr/> \$1139 56	

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal.

(Seal of Surveyor)

(Genl's Office.)

W. H. BROWN,

Surveyor-General.

UNITED STATES	}	No. 184.
vs.		
S. P. R. R. CO., ET AL,		

I hereby certify that I have compared the annexed copy of Defendants' Exhibit before the Special Examiner, No. 42, with the original on file in the office of the Land Department of the Southern Pacific R. R.

Co., and find it to be a full, true and correct copy thereof, so far as it involves the lands in suit, and omitting lands that are not in issue.

STEPHEN POTTER,
Special Examiner.

San Francisco, October 13th, 1893.

[Endorsed:] (Marked) Defendants' Exhibit before the Special Examiner, No. 42. Stephen Potter, Special Examiner. Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Br. & R.

United States Land Office,
Los Angeles, California, July 19th, 1884.

LIST No. 17.

Lands selected by the Southern Pacific Railroad Company.

Granted Limits.

Ex. No. 43.

G. 158. (6-6-93-250.)

Office of the Southern Pacific Railroad Company,

San Francisco, California.

I, Joseph L. Willeutt, Secretary of the Southern Pacific Railroad Company, do hereby certify that Jerome Madden was appointed Land Agent of the said Southern Pacific Railroad Company by the Board

of Directors of said Company, at a meeting held on the tenth (10th) day of May, A. D. 1876, and that since that time he has been continuously, and is now, the Land Agent of the said Southern Pacific Railroad Company.

IN TESTIMONY WHEREOF, I have hereunto (Corpor- set my hand and affixed the Corporate ate Seal Seal of the said Southern Pacific Railroad Company, the 11th day of June, A. D. 1884.

JOSEPH L. WILCUTT,
Secretary of the Southern Pacific Railroad Company.

LIST OF LANDS

In the Los Angeles Land District, California, selected by the Southern Pacific Railroad Company of California.

The undersigned, the duly authorized Land Agent of the Southern Pacific Railroad Company of California, under and by virtue of the 23d Section of the Act of Congress, approved March 3, 1871, entitled, "An Act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road and for other purposes," and under and by virtue of the Act of Congress, approved July 27, 1866, entitled, "An Act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," and the further Act, approved July 25, 1868, entitled, "An Act to extend the time for the construction of the South-

ern Pacific Railroad in the State of California," and the Joint Resolution of Congress, approved June 28, 1870, "Concerning the Southern Pacific Railroad of California," and under and in pursuance of the rules and regulations prescribed by the Commissioner of the General Land Office, hereby makes and files the following list of selections of public lands claimed by the said Company as inuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said Acts of Congress, and the location of the line of route of the railroad and telegraph of said company, being in part for the First (1st), Second (2nd), Third (3d) and Fourth (4th) Sections (two hundred, twenty-eight and 59-100 (228 59-100) miles) of the same, commencing at a point in NE. $\frac{1}{4}$, Sec. 17, T. 11 N., R. 12 W., S. B. B. & M. and ending at a point in SW. $\frac{1}{4}$ See. 24, T. 5 S., R. 7 E., S. B. B. & M., which said section of road and telegraph has been duly accepted by the President of the United States as provided in the aforesaid Acts and Joint Resolution of Congress. The selections being particularly described as follows:

JEROME MADDEN,

Land Agent of the Southern Pacific Railroad
Company.

G. 130. (4-5-92-500.)

Railroad List.

North of Base Line, and West of San Bernardino
Principal Meridian.

No.	PART OF SECTION.	No. of Section.	No. of Town.	No. of Range.	AREA.		Fees of Register and Receiver.
					Acre.	100	
	SW $\frac{1}{4}$ and S $\frac{1}{4}$ of SE $\frac{1}{4}$	29	6 N	12 W	240 00		
All		31	"	"	640 00		
All		1	6 N	13 W	640 00		
All		3	"	"	640 00		
All fract		7	"	"	640 00		
All		11	"	"	640 00		
S $\frac{1}{2}$		15	"	"	320 00		
NW $\frac{1}{4}$, W $\frac{1}{2}$ of SW $\frac{1}{4}$ and E							
$\frac{1}{2}$ of SE $\frac{1}{4}$		17	"	"	320 00		
All		21	"	"	640 00		
All		23	"	"	640 00		
All		25	"	"	640 00		
All		1	6 N	14 W	640 00		
NE $\frac{1}{4}$		11	"	"	160 00		
N $\frac{1}{2}$		13	"	"	320 00		
All		15	7 N	12 W	640 00		
All		21	"	"	640 00		
All		27	"	"	640 00		
All fract		31	"	"	642 40		

G. 130. (4-5-92-500.)

Railroad List.

North of Base Line, and West of San Bernardino
Principal Meridian.

No.	Part of Section	No. of Section	No. of Town.	No. of Range	Area, Acres	Fees of Register and Receiver
					per 100	
	*All fract.	7	7 N 13 W		636 00	
	All	15	" "		640 00	
	All	17	" "		640 00	
	All fract.	19	" "		636 06	
	All	21	" "		640 00	
	All	23	" "		640 00	
	All	27	" "		640 00	
	All	29	" "		640 00	
	All fract.	31	" "		639 00	
	All	33	" "		640 00	
	All	35	" "		640 00	
<hr/>						
	†E $\frac{1}{2}$, fract. NW $\frac{1}{4}$,					
	Lot 1 in SW $\frac{1}{4}$,					
	and N $\frac{1}{2}$ of Lot					
	2 in SW $\frac{1}{4}$	7	7 N 14 W		600 00	

*Only the S. $\frac{1}{2}$ Sec. 7, T. 7 N., R. 13 W., S. B. M., 317.80 acres, is involved in this suit, Case No. 184, U. S. vs. S. P. R. R. Co.

†The only tracts in Sec. 7, T. 7, R. 14 W., S. B. M., involved in this suit are the SE. $\frac{1}{4}$; Lot 1 in SW. $\frac{1}{4}$ and N. $\frac{1}{2}$ of Lot 2 of SW. $\frac{1}{4}$; 289.40 acres, Case 184, U. S. vs. S. P. R. R. Co.

No.	PART OF SECTION	NO. OF SECTION	No. of Township.	No. of Range	AREA	Fees of Register and Receiver
					ACRES	
†All		9	"	"	640 00	
§All		11	"	"	640 00	
All		13	"	"	640 00	
All		15	"	"	640 00	
All		21	"	"	640 00	
All		23	"	"	640 00	
All		25	"	"	640 00	
All		27	"	"	640 00	

†The only part of Sec. 9, T. 7 N., R. 14 W., S. B. M., involved in this suit is the S. $\frac{1}{2}$, 320.00 acres, Case No. 184, U. S. vs. S. P. R. R. Co.

§The only part of Sec. 11, T. 7 N., R. 14 W., S. B. M., involved in this suit is the S. $\frac{1}{2}$, 320.00 acres, Case No. 184, U. S. vs. S. P. R. R. Co.

G. 130. (4-5-92-500.)

Railroad List.

North of Base Line, and West of San Bernardino Principal Meridian.

No.	PART OF SECTION.	No. of Sect.	No. of Township.	No. of Range.	AREA.	Fees of Register and Receiver.
					Acres.	
	S $\frac{1}{2}$ of SW $\frac{1}{4}$, NE $\frac{1}{4}$ of SW $\frac{1}{4}$ and SW $\frac{1}{4}$ of SE $\frac{1}{4}$.		33 7 N	14 W	160 00	
N $\frac{1}{2}$			13 7 N	15 W	320 00	

STATE OF CALIFORNIA,

City and County of San Francisco. } ss.

I, Jerome Madden, being duly sworn, depose and say: That I am the Land Agent of the Southern Pacific Railroad Company; that the foregoing list of lands, which I hereby select, is a correct list of a portion of the public lands claimed by the said Southern Pacific Railroad Company as inuring to it, to aid in the construction of the railroad of said company from Mojave to Indio, for which a grant of lands was made by the Acts of Congress approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, as aforesaid; that the said lands are vacant, unappropriated and are not interdicted⁴ mineral nor reserved lands, and are of the character contemplated by the grant, being within the limits of twenty (20) miles on each side of the line of route for a continuous distance of two hundred and twenty-eight and 59-100 (228 59-100) miles, being for the first (1st), second (2d), third (3d) and fourth (4th) sections of said road, starting from a point in N. E. $\frac{1}{4}$, Sec. 17, T. 11 N., R. 12 W., S. B. B. & M., and ending at a point in S. W. $\frac{1}{4}$, Sec. 24, T. 5 S., R. 7 E., S. B. B. & M.

JEROME MADDEN (Seal.)

Sworn to and subscribed before me this 27th day of June, 1884.

(Seal of the Superior Court of the City and County of San Francisco, California.)

WILLIAM T. SESNON,
County Clerk of the City and County of San Francisco, California, and ex-officio Clerk of the Superior Court thereof, the same being a court of record.

United States Land Office,

Los Angeles, Cal., July 19, 1884.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Southern Pacific Railroad Company, under the grant to the said Southern Pacific Railroad Company, by Acts of Congress, approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, above mentioned, and selected by Jerome Madden, the duly authorized agent; and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, within the limit of twenty (20) miles on each side; and that the same are not, nor is any part thereof, returned and denominated as mineral land, or lands, nor claimed as swamp lands; nor is there any homestead, pre-emption, State or other valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows an assessment of the fees payable to us allowed by the Act of Congress, approved July 1, 1864, and contemplated by the circular of instructions dated January 24, 1867, addressed by the Commissioner of the General Land Office to Registers and Receivers of the United States Land Offices; and that the said company have paid to the undersigned, the Receiver, the full sum of four hundred ten and 50-100 dollars

(\$410 50-100) in full payment and discharge of said fees.

CHAS. R. JOHNSON, Register.
J. W. HAVERSTICK, Receiver.

G. 396. (9-14-87-400.)

United States Surveyor-General's Office,

San Francisco, California, July 9th, 1884.

I, W. H. Brown, Surveyor-General for the United States, in and for the State of California, hereby report and certify that the Southern Pacific Railroad Company has this day filed with me, at San Francisco, a duplicate Certificate of Deposit, No. 9, dated July 9th, 1884, to the credit of the United States, showing that the sum of \$1107.57 has been deposited as cost of survey, and \$369.19 for office work, and that the said sums are the correct amount of the cost of survey and office work for the lands mentioned and described in the list of lands hereto annexed, to the extent of said list.

Survey	\$1,107.57
Office Work.....	369.19
	<hr/>
	\$1,476.76

In TESTIMONY WHEREOF, I have hereunto set my hand and Official Seal.

(Seal of the Surveyor-General's Office)

W. H. BROWN,
Surveyor-General.

1314 SOUTHERN PACIFIC RAILROAD CO., ET AL.,

UNITED STATES,
S. P. R. R. Co., et al.

} No. 184.

I hereby certify that I have compared the annexed copy of Defendants' Exhibit before the Special Examiner, No. 43, with the original on file in the office of the Land Department of the Southern Pacific R. R. Co., and find it to be a full, true, and correct copy thereof, so far as it involves the lands in suit, and omitting lands that are not in issue.

STEPHEN POTTER,
Special Examiner.

San Francisco, October 13th, 1893.

[Endorsed]: (Marked) Defendants' Exhibit before the Special Examiner, No. 43. Stephen Potter, Special Examiner. Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

— — —
Br. & R.

United States Land Office,
Los Angeles, California, April 23, 1885.

List No. 30.

Lands selected by the Southern Pacific
Railroad Company.

Granted Limits.

Ex. No. 45.

G. 158. (6-6-93-250.)

Office of the

Southern Pacific Railroad Company,
San Francisco, California.

I, Joseph L. Willeutt, Secretary of the Southern Pacific Railroad Company, do hereby certify that Jerome

Madden was appointed Land Agent of the said Southern Pacific Railroad Company by the Board of Directors of said company, at a meeting held on the tenth (10th) day of May, A. D. 1876, and that since that time he has been continuously, and is now, the land agent of the said Southern Pacific Railroad Company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the corporate seal of the said Southern Pacific Railroad Company, the 24th day of March, A. D. 1885.

(Corporate Seal.)

JOSEPH L. WILLCUTT,
Secretary of the Southern Pacific Railroad Company.

LIST OF LANDS

In the Los Angeles Land District, California, selected by the Southern Pacific Railroad Company of California.

The undersigned, the duly authorized Land Agent of the Southern Pacific Railroad Company of California, under and by virtue of the 23d Section of the Act of Congress, approved March 3, 1871, entitled, "An Act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," and under and by virtue of the Act of Congress, approved July 27, 1866, entitled, "An Act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," and the further Act, approved July 25, 1868, entitled, "An Act to extend the time for the construction of the Southern

Pacific Railroad in the State of California," and the Joint Resolution of Congress, approved June 28, 1870, "Concerning the Southern Pacific Railroad of California," and under and in pursuance of the rules and regulations prescribed by the Commissioner of the General Land Office, hereby makes and files the following list of selections of public lands claimed by the said company as inuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said Acts of Congress, and the location of the line of route of the railroad and telegraph of said company, being in part for the First (1st), Second (2nd), and Fourth (4th) Sections (one hundred and seventy-eight 59-100 (178.59) miles) of the same, commencing at a point in NE. $\frac{1}{4}$ Sec. 17, T. 11 N., R. 12 W., S. B. B. & M., and ending at a point in SW. $\frac{1}{4}$, Sec. 4, T. 3 S., R. 1 W., S. B. B. & M., which said sections of road and telegraph have been duly accepted by the President of the United States, as provided in the aforesaid Acts and Joint Resolution of Congress. The selections being particularly described as follows:

JEROME MADDEN,
Land Agent of the Southern Pacific Railroad
Company.

G. 130. (4-5-92-500.)

Railroad List.

North of Base Line, and West of San Bernardino
Principal Meridian.

No.	PART OF SECTION.	NO. OF SECTION	No. of Town.	No. of Range	AREA Acres	ICO	Fees of Register and Receiver
All fractl		19	4 N	15 W	627 00		
S $\frac{1}{2}$		5	6 N	11 W	320 00		
All fractl		7	"	"	644 38		
All		17	"	"	640 00		
*All		9	7 N	12 W	640 00		
W $\frac{1}{2}$		11	7 N	13 W	320 00		
E $\frac{1}{2}$		11	7 N	15 W	320 00		

*Only the S $\frac{1}{2}$, Sec. 9, T 7 N., R 12 W., S. B. M., 320.00 acres, is involved in this suit, Case No. 184, U. S. vs. S. P. R. R. Co.

The only part of the tract opposite hereto involved in this suit is the SW $\frac{1}{4}$, 160 acres, Case No. 184, U. S. vs. S. P. R. R. Co.

The only part of the tract opposite hereto involved in this suit is the SE $\frac{1}{4}$, 160.00 acres, Case No. 184, U. S. vs. S. P. R. R. Co.

STATE OF CALIFORNIA,
 City and County of San Francisco. } ss.

I, Jerome Madden, being duly sworn, depose and say: That I am the Land Agent of the Southern Pacific Railroad Company; that the foregoing list of lands, which I hereby select, is a correct list of a portion of the public lands claimed by the said Southern Pacific Railroad Company as inuring to it, to aid in the construction of the railroad of said Company from Mojave to San Gorgonio, for which a grant of lands was made by the Acts of Congress approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, as aforesaid; that the said lands are vacant, unappropriated, and are not interdicted mineral nor reserved lands, and are of the character contemplated by the grant, being within the limits of twenty (20) miles on each side of the line of route for a continuous distance of one hundred and seventy-eight 59-100 (178 59-100) miles, being for the first (1st), second (2d) and fourth (4th) sections of said road, starting from a point in N. E. $\frac{1}{4}$, Sec. 17, T. 11 N., R. 12 W., S. B. B. & M., and ending at a point in S. W. $\frac{1}{4}$, Sec. 4, T. 3 S., R. 1 W., S. B. B. & M.

JEROME MADDEN (Seal.)

Sworn to and subscribed before me this 3rd day of April, 1885.

(Seal of the Superior Court of the City and County of San Francisco, Cal- ifornia.)	JAS. J. FLYNN, County Clerk of the City and County of San Francisco, Califor- nia, and ex-officio Clerk of the Superior Court thereof, the same being a court of record.
--	---

United States Land Office,
Los Angeles, Cal., April 23, 1885.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Southern Pacific Railroad Company, under the grant to the said Southern Pacific Railroad Company, by Acts of Congress, approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, above mentioned, and selected by Jerome Madden, the duly authorized agent; and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limit of twenty (20) miles on each side; and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands, nor claimed as swamp lands; nor is there any homestead, pre-emption, State, or other valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows an assessment of the fees payable to us allowed by the Act of Congress, approved July 1, 1864, and contemplated by the circular of instructions dated January 24, 1867, addressed by the Commissioner of the General Land Office to Registers and Receivers of the United States Land Offices; and that the said company have paid to the undersigned, the Receiver, the full sum of one hundred and eighty-one & 50-100 dollars (\$181.50) in full payment and discharge of said fees.

CHAS. R. JOHNSON, Register.
J. W. HAVERSTICK, Receiver.

G. 396. (9-14-87-400.)

United States Surveyor-General's Office,
San Francisco, California, April 14th, 1885.

I, W. H. Brown, Surveyor-General for the United States in and for the State of California, hereby report and certify that the Southern Pacific Railroad Company has this day filed with me, at San Francisco, a duplicate Certificate of Deposit No. 234, dated April 4th, 1885, to the credit of the United States, showing that the sum of \$489.24 has been deposited as cost of survey, and \$163.08 for office work, and that the said sums are the correct amount of the cost of survey and office work for the lands mentioned and described in the list of lands hereto annexed to the extent of said list.

Survey.....	\$489.24
Office work.....	163.08
<hr/>	
	\$652.32

IF TESTIMONY WHEREOF, I have hereunto set my hand and Official Seal.

(Seal of the Surveyor-General's Office.)

W. H. BROWN,
Surveyor-General.

UNITED STATES, }
vs. } No. 184.
S. P. R. R. Co., et al. }

I hereby certify that I have compared the annexed copy of Defendants' Exhibit before the Special Examiner, No. 45, with the original on file in the office of

the Land Department of the Southern Pacific R. R. Co., and find it to be a full, true and correct copy thereof, so far as it involves the lands in suit, and omitting lands that are not in issue.

STEPHEN POTTER,
Special Examiner.

San Francisco, October 13th, 1893.

[Endorsed]: (Marked) Defendants' Exhibit before the Special Examiner, No. 45, Stephen Potter, Special Examiner. Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Br. & R.

United States Land Office,

Los Angeles, California, April 28, 1885.

LIST NO. 31.

Lands selected by the Southern Pacific Railroad Company.

Granted Limits.

Ex. No. 46.

G. 158. (6-6-93-250.)

Office of the Southern Pacific Railroad Company,
San Francisco, California.

I, Joseph L. Willeutt, Secretary of the Southern Pacific Company, do hereby certify that Jerome Madden was appointed Land Agent of the said Southern Pacific Railroad Company by the Board of Directors of said Company, at a meeting held on the tenth

(10th) day of May, A. D. 1876, and that since that time he has been continuously, and is now, the Land Agent of the said Southern Pacific Railroad Company.

(Corporate
Seal.)

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the corporate seal of the said Southern Pacific Railroad Company, the 30th day of March, A. D. 1885.

JOSEPH L. WILLCUTT,
Secretary of the Southern Pacific Railroad
Company.

LIST OF LANDS

In the Los Angeles Land District, California, selected by the Southern Pacific Railroad Company of California.

The undersigned, the duly authorized Land Agent of the Southern Pacific Railroad Company of California, under and by virtue of the 23d section of the Act of Congress, approved March 3, 1871, entitled, "An Act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road, and for other purposes," and under and by virtue of the Act of Congress, approved July 27, 1866, entitled, "An Act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," and the further Act, approved July 25, 1868, entitled, "An Act to extend the time for the construction of the Southern Pacific Railroad in the State of California," and the Joint Resolution of Congress, approved June 28, 1870, "Concerning the Southern Pacific Railroad

of California," and under and in pursuance of the rules and regulations prescribed by the Commissioner of the General Land Office, hereby makes and files the following lists of selections of public lands claimed by the said Company, as inuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said Acts of Congress, and the location of the line of route of the railroad and telegraph of said company; being in part for the Fourth (4th) Section (seventy-eight and 59-100 (78 59-100) miles) of the same, commencing at a point in NW $\frac{1}{4}$ Sec. 3, T. 2 N, R. 15 W, S. B. B. & M. and ending at a point in NE $\frac{1}{4}$ Sec. 17, T. 11 N, R. 12 W, S. B. B. & M., which said section of road and telegraph has been duly accepted by the President of the United States, as provided in the aforesaid Acts and Joint Resolution of Congress. The sections being particularly described as follows:

JEROME MADDEN,
Land Agent of the Southern Pacific Railroad
Company.

G. 130. (4-5-92-500.)

Railroad List.

North of Base Line, and West of San Bernardino
Principal Meridian.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area.		Fees of Register and Receiver.
					Acre.	100.	
	Fracl. E $\frac{1}{2}$	3	4 N	14 W	322	95	
	S $\frac{1}{2}$ of S E $\frac{1}{4}$, S						
	$\frac{1}{2}$ of S W $\frac{1}{4}$	11	"	"	160	00	
	W $\frac{1}{2}$ of NW $\frac{1}{4}$	13	"	"	80	00	
	All fract.	5	4 N	15 W	626	60	
	NW $\frac{1}{4}$, S $\frac{1}{2}$	13	"	"	480	00	
	All	17	"	"	640	00	
	N $\frac{1}{2}$, N $\frac{1}{2}$, of SE $\frac{1}{4}$,						
	N $\frac{1}{2}$ of SW $\frac{1}{4}$	21	"	"	480	00	
	All	29	"	"	640	00	
	All fract.	33	"	"	676	36	
	E $\frac{1}{2}$, NE $\frac{1}{4}$ of NW						
	$\frac{1}{4}$, E $\frac{1}{2}$ of SW $\frac{1}{4}$,						
	SW $\frac{1}{4}$ of S W $\frac{1}{4}$	23	4	15	480	00	
	E $\frac{1}{2}$ of NE $\frac{1}{4}$, N						
	E $\frac{1}{4}$ of SE $\frac{1}{4}$,						
	Lot 4.	35	"	"	161	15	

STATE OF CALIFORNIA,
City and County of San Francisco. } ss.

I, Jerome Madden, being duly sworn, depose and say:
that I am the Land Agent of the Southern Pacific
Railroad Company; that the foregoing list of lands

which I hereby select, is a correct list of a portion of the public lands, claimed by the Southern Pacific Railroad Company as inuring to it, to aid in the construction of the railroad of said company, from San Fernando to Mojave, for which a grant of lands was made by the Acts of Congress approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, as aforesaid; that the said lands are vacant, unappropriated, and are not interdicted mineral nor reserved lands, and are of the character contemplated by the grant, being within the limits of twenty (20) miles on each side of the line of route for a continuous distance of seventy-eight and 59-100 (78 59-100) miles, being for the Fourth (4th) Section of said road, starting from a point in N. W. $\frac{1}{4}$ Sec. 3, T. 2 N., R. 15 W., S. B. B. & M., and ending at a point in N. E. $\frac{1}{4}$ Sec. 17, T. 11 N., R. 12 W., S. B. B. & M.

JEROME MADDEN. (Seal)

Sworn to and subscribed before me this 16th day of April, 1885.

(Seal of the Superior Court of the City and County of San Francisco, California.)

JAMES. J. FLYNN,
County Clerk of the City and
County of San Francisco, California,
and ex-officio Clerk of the Superior Court thereof,
the same being a court of record.

United States Land Office,

Los Angeles, Cal., April 28, 1885.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Southern Pacific Railroad Company, under the

grant to the said Southern Pacific Railroad Company, by Acts of Congress, approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, above mentioned, and selected by Jerome Madden, the duly authorized agent; and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limit of twenty (20) miles on each side; and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands, nor claimed as swamp lands; nor is there any homestead, pre-emption, State, or other valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows an assessment of the fees payable to us allowed by the Act of Congress, approved July 1, 1864, and contemplated by the circular of instructions, dated January 24, 1867, addressed by the Commissioner of the General Land Office to Registers and Receivers of the United States Land Offices; and that the said company have paid to the undersigned, the Receiver, the full sum of fifty-nine 50-100 dollars (\$59 50-100) in full payment and discharge of said fees.

CHAS. R. JOHNSON,
Register.

J. W. HAVERSTICK,
Receiver.

G. 396. (9-14-87-400.)

United States Surveyor-General's Office,
San Francisco, California,

April 17th, 1885.

I, W. H. Brown, Surveyor-General for the United States, in and for the State of California, hereby report and certify that the Southern Pacific Railroad Company has this day filed with me, at San Francisco, a duplicate Certificate of Deposit No. 242, dated April 17th, 1885, to the credit of the United States, showing that the sum of \$160.22 has been deposited as cost of survey, and \$53.40 for office work, and that the said sums are the correct amount of the cost of survey and office work for the lands mentioned and described in the list of lands hereto annexed to the extent of said list:

Survey.....	\$160.22
Office work.....	53.40
	—
	\$213.62

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal.

(Seal of the Surveyor-
General's Office.)

W. H. BROWN,
Surveyor-General.

UNITED STATES
vs.
S. P. R. R. Co., ET AL. }
No. 184.

I hereby certify that I have compared the annexed copy of Defendants' Exhibit before the Special Examiner, No. 46, with the original on file in the office of the Land Department of the Southern Pacific R. R.

Co., and find it to be a full, true, and correct copy thereof, so far as it involves the lands in suit, and omitting lands that are not in issue.

STEPHEN POTTER,

Special Examiner.

San Francisco, October 13th, 1893.

[Endorsed]: (Marked) Defendants' Exhibit before the Special Examiner, No. 46, Stephen Potter, Special Examiner. Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Br. & R.

United States Land Office,
Los Angeles, California,.....188

LIST NO. 33.

Lands elected by the Southern Pacific
Railroad Company.
Granted Limits.

Ex. No. 47.

[Red Ink]

U. S. Land Office,
Los Angeles, Cal., Sep. 14, 1885.

Presented and fees tendered and rejected for the reason that all the tracts embraced in the within lists are within the boundaries designated in the diagram furnished this office by the Com. G. L. O. of lands excepted from the grant to said Railroad Co. by reason of their being within the limits of the Hofman survey of the Sespe Rancho, and for the further reason that all of said tracts are covered by entries made in this office in accordance with said diagram.

CHAS. R. JOHNSON, Register.

J. W. HAVERSTICK, Receiver.

[Black Ink]

Mem. Oct. 23, '85.

Rejection affirmed by Com. Oct. 1, '85.

Beard's letter, Oct. 5, '85.

G. 158. (6-6-93-250.)

Office of the
Southern Pacific Railroad Company,
San Francisco, California.

I, Joseph L. Willeutt, Secretary of the Southern Pacific Railroad Company, do hereby certify that Jerome Madden was appointed Land Agent of the said Southern Pacific Railroad Company by the Board of Directors of said Company, at a meeting held on the tenth (10th) day of May, A. D. 1876, and that since that time he has been continuously, and is now, the Land Agent of the said Southern Pacific Railroad Company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Corporate Seal of the said Southern Pacific Railroad Company, the 24th day of July, A. D. 1885.

(Corporate Seal.) JOSEPH L. WILLCUTT,
Secretary of the Southern Pacific Railroad
Company.

LIST OF LANDS

In the Los Angeles Land District, California, selected
the by Southern Pacific Railroad Company of California.

The undersigned, the duly authorized Land Agent of
the Southern Pacific Railroad Company of California,
under and by virtue of the 23d Section of the Act of

Congress, approved March 3, 1871, entitled, "An Act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," and under and by virtue of the Act of Congress, approved July 27, 1866, entitled, "An Act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," and the further Act, approved July 25, 1868, entitled, "An Act to extend the time for the construction of the Southern Pacific Railroad in the State of California," and the Joint Resolution of Congress, approved June 28, 1870, "Concerning the Southern Pacific Railroad of California," and under and in pursuance of the rules and regulations prescribed by the Commissioner of the General Land Office, hereby makes and files the following list of selections of public lands claimed by the said company as inuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said Acts of Congress, and the location of the line of route of the railroad and telegraph of said company, being in part for the Fourth (4th) Section (seventy-eight 59-100 (78 59-100) miles) of the same, commencing at a point in NW. $\frac{1}{4}$, Sec. 3, T. 2 N., R. 15 W., S. B. B. & M., and ending at a point in NE. $\frac{1}{4}$, Sec. 17, T. 11 N., R. 12 W., S. B. B. & M., which said section of road and telegraph has been duly accepted by the President of the United States, as provided in the aforesaid Acts and Joint Resolution of Congress. The selections being particularly described as follows:

JEROME MADDEN,
Land Agent of the Southern Pacific Railroad
Company.

G. 130. (4-5-92-500.)

Railroad List.

North of Base Line, and West of San Bernardino
Principal Meridian.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range	Area,	Acres.	Fees of Register and Receiver.
						100	
* Lot 1 (or SW $\frac{1}{4}$ of SW $\frac{1}{4}$)		19	4 N	18W		39 94	50
† Lots 1 & 2, and W $\frac{1}{2}$ of NW $\frac{1}{4}$		29	4 N	18W		160 28	2 00

* Lot 1. See. 19, Tp. 4 N., R. 18 W., S. B. M.
Herman Haines. T. C. Entry, No. 1153.

July 17, 1885.

† Lots 1 and 2, and W $\frac{1}{2}$ of NW $\frac{1}{4}$, Sec. 29, Tp. 4 N., R. 18 W., S. B. M.

Luciano Sequeiros, D. S. No. 2548. Dec. 11, 1883.

STATE OF CALIFORNIA,
City and County of San Francisco, } ss.

I, Jerome Madden, being duly sworn, depose and say:
That I am the Land Agent of the Southern Pacific Railroad Company; that the foregoing list of lands which I hereby select is a correct list of a portion of the public lands claimed by the said Southern Pacific Railroad Company as inuring to it, to aid in the construction of the railroad of said Company from San Fernando to Mojave, for which a grant of lands was made by the Acts of Congress approved March 3,

1871, July 27, 1866, July 25, 1868, and June 28, 1870, as aforesaid; that the said lands are vacant, unappropriated, and are not interdicted mineral nor reserved lands, and are of the character contemplated by the grant, being within the limits of twenty (20) miles on each side of the line of route for a continuous distance of seventy-eight 59-100 (78 59-100) miles, being for the fourth (4th) section of said road, starting from a point in NW $\frac{1}{4}$ Sec., 3 T. 2 N., R. 15 W., S. B. B. & M., and ending at a point in N. E. $\frac{1}{4}$, Sec. 17, T. 11 N., R. 12 W., S. B. B. & M.

JEROME MADDEN, (Seal)

Sworn to and subscribed before me this 13th day of August, 1885.

(Seal of the

Superior Court of the City and County of San Francisco, California, and ex-officio Clerk of the Superior Court thereof, the same being a court of record.
the City and County of San Francisco, California.)

JAS. J. FLYNN,

United States Land Office,

Los Angeles, Cal., 18

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Southern Pacific Railroad Company, under the grant to the said Southern Pacific Railroad Company, by Acts of Congress, approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, above mentioned, and selected by Jerome Madden, the duly

authorized agent; and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved and that the whole of said lands are surveyed public lands of the United States, and within the limit of twenty (20) miles on each side; and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands nor claimed as swamp lands; nor is there any homestead, pre-emption, State, or other valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows an assessment of the fees payable to us allowed by the Act of Congress, approved July 1, 1864, and contemplated by the circular of instructions dated January 24, 1867, addressed by the Commissioner of the General Land Office to Registers and Receivers of the United States Land Offices; and that the said company have paid to the undersigned, the Receiver, the full sum of twelve 50-100 Dollars (\$12 50-100) in full payment and discharge of said fees.

..... Register.

..... Receiver.

G. 396. (9-14-87-400.)

United States Surveyor-General's Office,

San Francisco, California,

August 13th, 1885.

I, W. H. Brown, Surveyor-General for the United States, in and for the State of California, hereby report and certify that the Southern Pacific Railroad

Company has this day filed with me, at San Francisco, a duplicate Certificate of Deposit, No. 57, dated August 13th, 1885, to the credit of the United States, showing that the sum of \$33.75 has been deposited as cost of survey, and \$11.25 for office work, and that the said sums are the correct amount of the cost of survey and office work for the lands mentioned and described in the list of lands hereto annexed to the extent of said list.

Survey	\$33.75
Office work	11.25
	—
	\$45.00

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal.

(Seal of the Surveyor-General's Office.)

W. H. BROWN,
Surveyor-General.

UNITED STATES }
 vs. } No. 184.
S. P. R. R. Co., ET AL. }

I hereby certify that I have compared the annexed copy of Defendants' Exhibit before the Special Examiner, No. 47, with the original on file in the office of the land department of the Southern Pacific R. R. Co., and find it to be a full, true and correct copy thereof, so far as it involves the lands in suit, and omitting lands that are not in issue.

STEPHEN POTTER,
Special Examiner.

San Francisco, October 13th, 1893.

[Endorsed]: (Marked) Defendants' Exhibit before the Special Examiner, No. 47, Stephen Potter, Special Examiner. Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Br. & R.

United States Land Office,
Los Angeles, California, —, 188—.

LIST NO. 52.

Lands selected by the Southern Pacific
Railroad Company.

Granted Limits.

Branch Line.

Ex. No. 48.

U. S. Land Office, Los Angeles, Cala.,

May 8, 1890.

Offered and fees of Register and Receiver tendered, and also offer made to pay surveying fees, and rejected on the ground that the tract named is situated in the granted limits of the Atlantic and Pacific Railroad, which lands are suspended pending motion for review of Department Decision before Hon. Sec'y of the Interior, and for the further reason that the tract has been applied for as homestead by William H. George, which application to enter is now pending before Hon. Commissioner of the General Land Office.

W. H. SEAMANS, Register.
I. H. POLK, Receiver.

Appealed—Cabot, May 8, 1890.

G. 138. (6-6-93-250.)

Office of the Southern Pacific Railroad Company,
San Francisco, California.

I, Joseph L. Willcutt, Secretary of the Southern Pacific Railroad Company, do hereby certify that Jerome Madden was appointed Land Agent of the said Southern Pacific Railroad Company by the Board of Directors of said Company, at a meeting held on the tenth (10th) day of May, A. D. 1876, and that since that time he has been continuously, and is now, the Land Agent of the said Southern Pacific Railroad Company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Corporate Seal of the said Southern Pacific Railroad Company, the 3rd day of May, A. D. 1890.

(Corporate Seal) JOSEPH L. WILLCUTT,
Secretary of the Southern Pacific Railroad
Company.

LIST OF LANDS

In the Los Angeles Land District, California, selected by the Southern Pacific Railroad Company, of California.

THE UNDERSIGNED, the duly authorized Land Agent of the Southern Pacific Railroad Company, of California, under and by virtue of the 23d Section of the Act of Congress, approved March 3, 1871, entitled, "An Act to incorporate the Texas Pacific Railroad

IN THE
UNITED STATES SUPREME COURT,

No. 770

OCTOBER TERM, 1895.

TRANSCRIPT OF RECORD.

**SOUTHERN PACIFIC RAILROAD
COMPANY, et al.,**

Appellants.

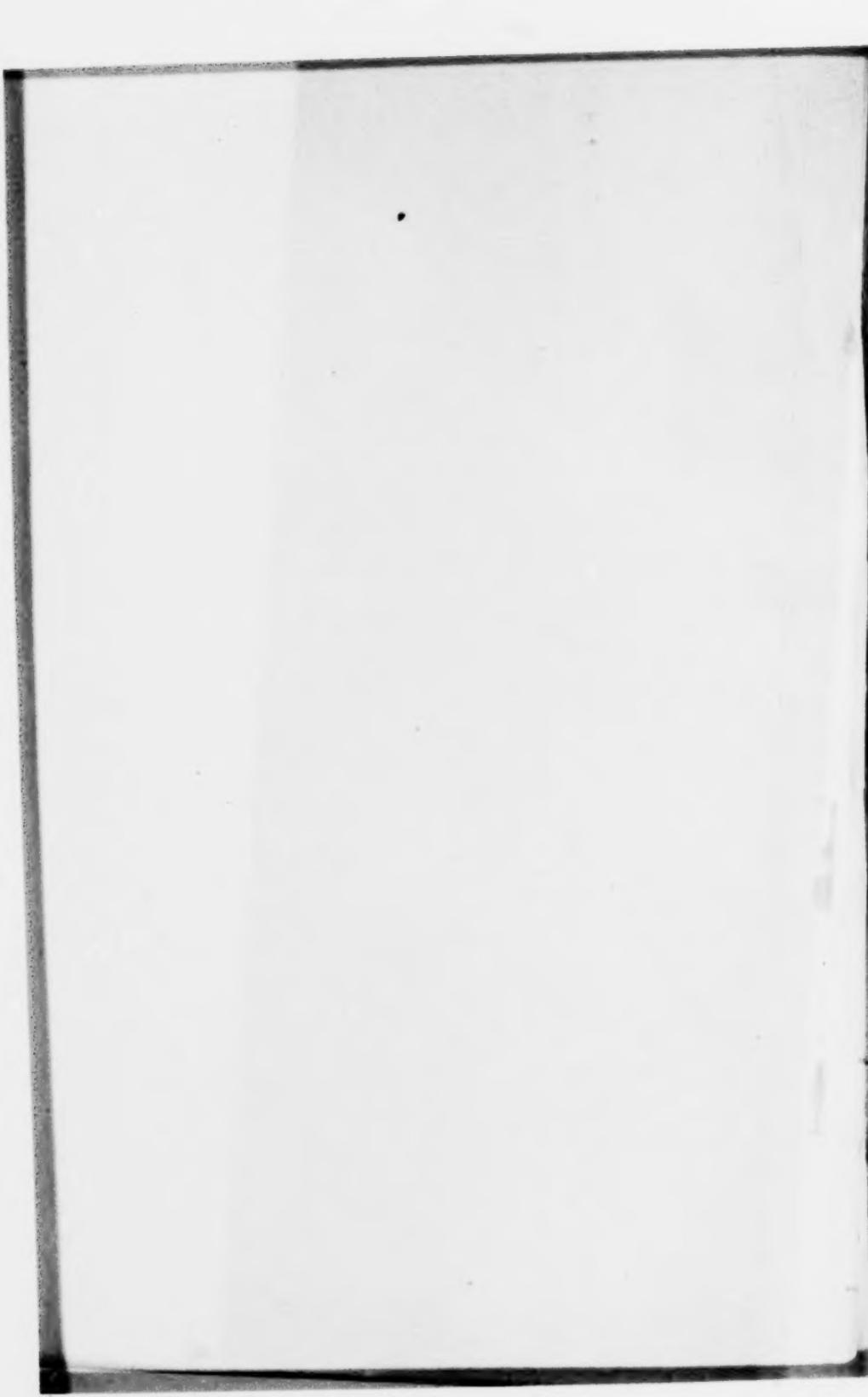
vs.

THE UNITED STATES.

VOLUME 8.

(Pages 1257 to 2008.)

*Appeal from the United States Circuit Court of Appeals for
the Ninth Circuit.*



IN THE
CIRCUIT COURT
OF THE
United States of America,
OF THE
NINTH JUDICIAL CIRCUIT
IN AND FOR THE
SOUTHERN DISTRICT OF CALIFORNIA

VOLUME 3.

(Pages 1337 to 2008)

The United States of America,

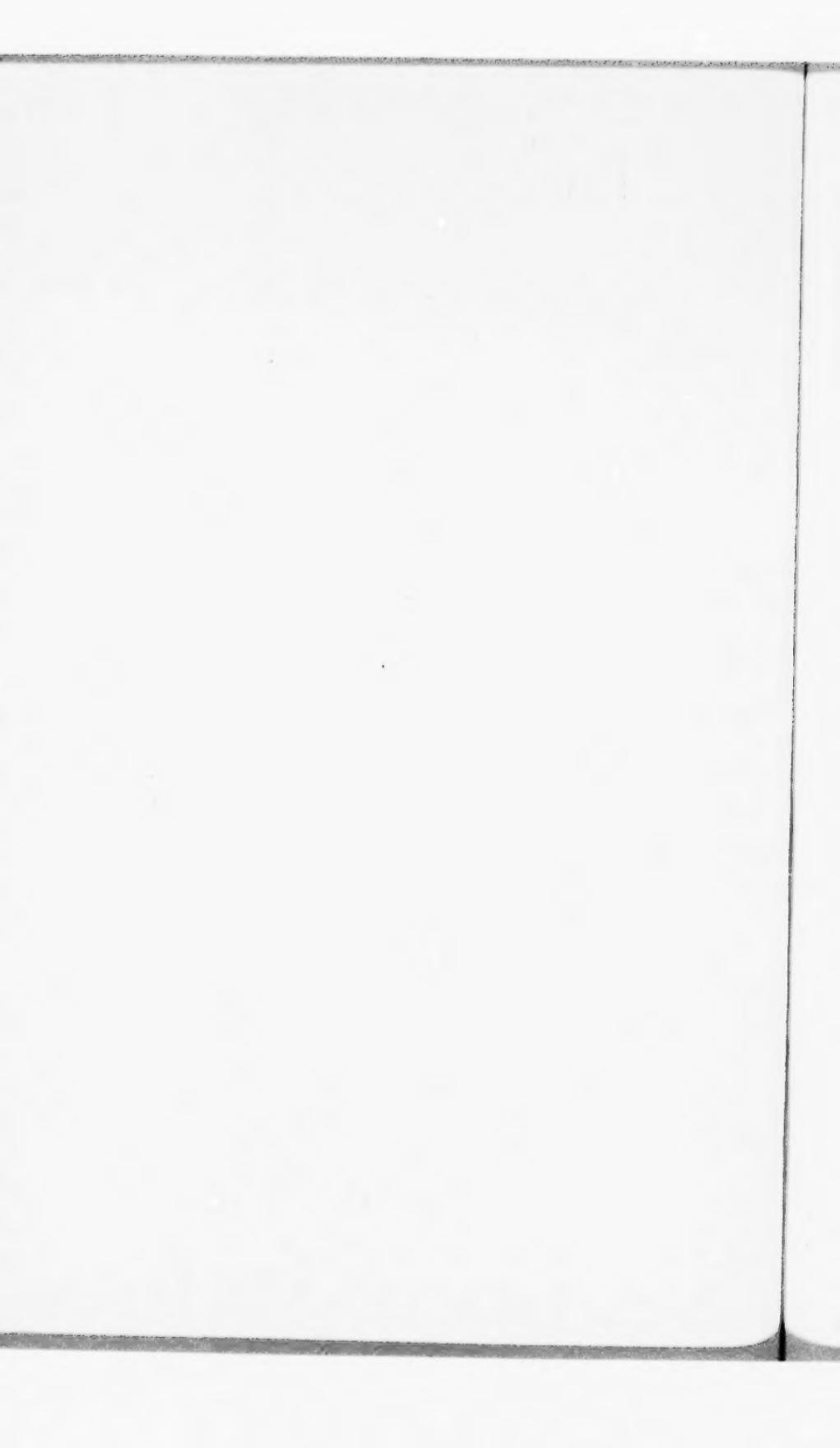
Complainant,

v.s.

The Southern Pacific Railroad
Company, et al,

Defendants.

No. 184



Company, and to aid in the construction of its road, and for other purposes," and under and by virtue of the Acts of Congress approved July 27, 1866, entitled, "An Act granting lands to aid in the construction of a railroad and telegraph line from the State of Missouri and Arkansas to the Pacific Coast," and the further Act approved July 25, 1868, entitled, "An Act to extend the time for the construction of the Southern Pacific Railroad in the State of California," and the Joint Resolution of Congress, approved June 28, 1870, "Concerning the Southern Pacific Railroad of California," and under and in pursuance of the rules and regulations prescribed by the Commissioner of the General Land Office, hereby makes and files the following list of selections of public lands claimed by the said Company as inuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said Acts of Congress, and the location of the line of route of the railroad and telegraph of said Company; being in part for the fourth (4th) Section (seventy-eight 59-100 (78 59-100) miles) of the same, commencing at San Fernando and ending at Mojave, which said section of road and telegraph has been duly accepted by the President of the United States, as provided in the aforesaid Acts and Joint Resolution of Congress. The selection being particularly described as follows:

JEROME MADDEN,

Land Agent of the Southern Pacific Railroad
Company.

1338 SOUTHERN PACIFIC RAILROAD CO., ET AL.,

G 130. (4-5-92-500.)

Railroad List.

North of Base Line, and West of San Bernardino
Principal Meridian.

No.	Part of Section	No. of Section	No. of Town.	No. of Range	Area.		Fees of Register and Receiver.
					Acres	100	
	NW $\frac{1}{4}$ of NE $\frac{1}{4}$, N						
	$\frac{1}{2}$ of NW $\frac{1}{4}$	25	5 N 17 W		120 00		
	SW $\frac{1}{4}$ of NW $\frac{1}{4}$	"	" "	"	40 00		
	Total,				160 00		\$2.00

STATE OF CALIFORNIA, }
City and County of San Francisco. } ss.

I, Jerome Madden, being duly sworn, depose and say: that I am the Land Agent of the Southern Pacific Railroad Company; that the foregoing list of lands which I hereby select is a correct list of a portion of the public lands claimed by the said Southern Pacific Railroad Company as inuring to it, to aid in the construction of the railroad of said company from San Fernando to Mojave, for which a grant of lands was made by the Act of Congress approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, as aforesaid; that the said lands are vacant, unappropriated, and are not interdicted mineral nor reserved lands, and are of the character contemplated by the grant, being within the limits of twenty (20) miles on each side of the line of route for a continuous distance of

seventy-eight 59-100 (78 59-100) miles, being for the Fourth (4th) section of said road, starting from a point in N. W. $\frac{1}{4}$ Sec. 3, T. 2 N., R. 15 W., S. B. B. & M. and ending at a point in N. E. $\frac{1}{4}$ Sec. 17, T. 11 N., R. 12 W., S. B. B. & M.

JEROME MADDEN, (Seal.)

Sworn to and subscribed before me this third (3rd) day of May, 1890.

Witness my hand and notarial seal,

E. B. RYAN,

Notary Public in and for the City and
(Notarial Seal) County of San Francisco, in the State
of California.

United States Land Office,

Los Angeles, Cal., 1890.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Southern Pacific Railroad Company under the grant to the said Southern Pacific Railroad Company, by Acts of Congress, approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, above mentioned, and selected by Jerome Madden, the duly authorized agent; and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limit of twenty (20) miles on each side; and that the same are not, nor is any part thereof, returned and

denominated as mineral land or lands, nor claimed as swamp lands; nor is there any homestead, pre-emption, State or other valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows an assessment of the fees payable to us allowed by the Act of Congress approved July 1, 1864, and contemplated by the circular of instructions, dated January 24, 1867, addressed by the Commissioner of the General Land Office to Registers and Receivers of the United States Land Offices; and that the said Company have paid to the undersigned, the Receiver, the full sum of two (\$2.00) dollars in full payment and discharge of said fees.

..... Register.

..... Receiver.

UNITED STATES, }
vs. } No. 184.
S. P. R. R. Co., et al.)

I hereby certify that I have compared the annexed copy of Defendants' Exhibit before the Special Examiner No. 48, with the original on file in the office of the Land Department of the Southern Pacific R. R. Co., and find it to be a full, true and correct copy thereof, so far as it involves the lands in suit, and omitting lands that are not in issue.

STEPHEN POTTER,
Special Examiner.

San Francisco, October 13th, 1893.

[Endorsed:] (Marked) Defendants' Exhibit before the Special Examiner, No. 48. Stephen Potter, Special Examiner. Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Br. & R.

United States Land Office,
Los Angeles, California,
.....
1892.

LIST No. 71.

Lands Selected by the Southern Pacific
Railroad Company.

Granted Limits.

Branch Line.

Ex. No. 49.

U. S. Land Office, Los Angeles, Cal.,
April 18, 1892.

Offered, and fees tendered and rejected on the ground that the lands described in said lists are within the primary limits of the withdrawal for the A. & P. R. R. Co.

W. H. SEAMANS, Register.

G. W. BRYANT, Receiver.

Appealed (Cabot's letter, Apr. 22, 1892.)

G. 158. (6-6-93-200.)

Office of the Southern Pacific Railroad Company,
San Francisco, California.

I, Joseph L. Willeutt, Secretary of the Southern Pacific Railroad Company, do hereby certify that Jerome Madden was appointed Land Agent of the said

Southern Pacific Railroad Company by the Board of Directors of said Company, at a meeting held on the tenth (10th) day of May, A. D. 1876, and that since that time he has been continuously, and is now, the Land Agent of the said Southern Pacific Railroad Company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the corporate seal of the said Southern Pacific Railroad Company, the 11th day of April, A. D. 1892.

(Corporate Seal.) JOSEPH L. WILLCUTT,
Secretary of the Southern Pacific Railroad Company.

LIST OF LANDS

In the Los Angeles Land District, California, selected by the Southern Pacific Railroad Company of California.

The undersigned, the duly authorized Land Agent of the Southern Pacific Railroad Company of California, under and by virtue of the 23d Section of the Act of Congress, approved March 3, 1871, entitled, "An Act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," and under and by virtue of the Act of Congress, approved July 27, 1866, entitled, "An Act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," and the further Act, approved July 25, 1868, entitled, "An Act to extend the time for the construction of the Southern Pacific Railroad Company in the State of California," and the

Joint Resolution of Congress, approved June 28, 1870, "Concerning the Southern Pacific Railroad of California," and under and in pursuance of the rules and regulations prescribed by the Commissioner of the General Land Office, hereby makes and files the following list of selections of public lands claimed by the said Company as inuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said Acts of Congress, and the location of the line of route of the railroad and telegraph of said Company, being in part for the fourth (4th) section (Seventy-eight 59-100 (78.59) miles) of the same, commencing at San Fernando and ending at Mojave, which said section of road and telegraph has been duly accepted by the President of the United States, as provided in the aforesaid Acts and Joint Resolution of Congress. The selections being particularly described as follows:

JEROME MADDEN,

Land Agent of the Southern Pacific Railroad Company.

G. 130. (4-5-92-500.)

Railroad List.

North of Base Line, and West of San Bernardino
Principal Meridian.

No.	Part of Section.	No. of Section.	No. of Town.	No. of Range.	Area.		Fees of Register and Receiver.
					Acre.	100	
	W $\frac{1}{2}$ of SW $\frac{1}{4}$	9	3 N	16 W	80	00	
	NE $\frac{1}{4}$ of NE $\frac{1}{4}$, S $\frac{1}{2}$ of NE $\frac{1}{4}$, NW $\frac{1}{4}$ of NW $\frac{1}{4}$, S $\frac{1}{2}$ of NW $\frac{1}{4}$, S $\frac{1}{2}$						
	NW $\frac{1}{4}$, S $\frac{1}{2}$	15	"	"	560	00	
	Lots 1, 2, 3 and 4	17	"	"	113	51	
	NE $\frac{1}{4}$ of NE $\frac{1}{4}$	21	"	"	40	00	
	Lots 1, 2, 3 and 4, S $\frac{1}{2}$ of NE $\frac{1}{4}$; S $\frac{1}{2}$ of NW $\frac{1}{4}$, S $\frac{1}{2}$	1	3 N	17 W	616	70	
					1,410	21	\$18.00

STATE OF CALIFORNIA, } ss.
City and County of San Francisco. }

I, Jerome Madden, being duly sworn, depose and say: That I am the Land Agent of the Southern Pacific Railroad Company; that the foregoing list of lands which I hereby select is a correct list of a portion of the public lands claimed by the said Southern Pacific Railroad Company as inuring to it, to aid in the construction of the railroad of said company, from San Fernando to Mojave, for which a grant of

lands was made by the Acts of Congress, approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, as aforesaid; that the said lands are vacant, unappropriated, and are not interdicted mineral nor reserved lands, and are of the character contemplated by the grant, being within the limits of twenty (20) miles on each side of the line of route for a continuous distance of seventy-eight 59-100 (78-59) miles, being for the fourth (4th) section of said road, starting from a point in NW. $\frac{1}{4}$, Sec. 3, T. 2 N., R. 15 W., S. B. B. & M., and ending at a point in NE. $\frac{1}{4}$, Sec. 17, T. 11 N., R. 12 W., S. B. B. & M.

(Seal)

JEROME MADDEN.

Sworn to and subscribed before me this eleventh (11th) day of April, 1892.

Witness my hand and Notarial Seal,

(Notarial Seal)

E. B. RYAN,

Notary Public in and for the City and County
of San Francisco, in the State of California.

United States Land Office,

Los Angeles, Cal., 1892.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Southern Pacific Railroad Company, under the grant to the said Southern Pacific Railroad Company, by Acts of Congress, approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, above mentioned, and selected by Jerome Madden, the duly authorized agent; and we have tested the accuracy of said list by the plats and records of this office, and

that we find the same to be correct; and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limit of twenty (20) miles on each side; and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands, nor claimed as swamp lands; nor is there any homestead, pre-emption, State, or other valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows an assessment of the fees payable to us allowed by the Act of Congress, approved July 1, 1864, and contemplated by the circular of instructions, dated January 24, 1867, addressed by the Commissioner of the General Land Office to Registers and Receivers of the United States Land Offices; and that the said company have paid to the undersigned, the Receiver, the full sum of eighteen (\$18.00) dollars in full payment and discharge of said fees.

....., Register.

....., Receiver.

San Francisco, Cal., April 11th, 1892.

The Southern Pacific Railroad Company offers to pay, under protest, the expense of surveying the lands selected in the within list, because it claims to be exempt from such payment by provisions of the grant of lands to it by Congress.

JEROME MADDEN,
Land Agent Southern Pacific R. R. Co.

UNITED STATES,
vs.
S. P. R. R. Co., ET AL. } No. 184.

I hereby certify that I have compared the annexed copy of Defendants' Exhibit before the Special Examiner, No. 49, with the original on file in the office of the Land Department of the Southern Pacific R. R. Co., and find it to be a full, true and correct copy thereof, so far as it involves the lands in suit, and omitting lands that are not in issue.

STEPHEN POTTER,
Special Examiner.

San Francisco, October 13th, 1893.

[Endorsed]: (Marked) Defendants' Exhibit before the Special Examiner, No. 49. Stephen Potter, Special Examiner. Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Br. & R.

LIST No. 1.

Lands selected by the Southern Pacific Railroad Company, in the Los Angeles Land District, State of California.

Indemnity Limits.

Ex. No. 50.

Office of the

Southern Pacific Railroad Company,

San Francisco, California, January 19th, 1876.

STATE OF CALIFORNIA, }
City and County of San Francisco. }

I, Joseph L. Willeutt, Secretary of the Southern Pacific Railroad Company, do hereby certify that Benja-

min B. Redding was appointed Land Agent of the said Southern Pacific Railroad Company by the Board of Directors of said company at a regular meeting, held on the third (3d) day of July, A. D. 1871, and that since that time he has been continuously, and is now the Land Agent of the said Southern Pacific Railroad Company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the corporate seal of the said Southern Pacific Railroad Company, the nineteenth day of January, A. D. 1876.

(Corporate seal) JOSEPH L. WILLCUTT,

Secretary of the Southern Pacific
Railroad Company.

LIST OF LANDS

In the Los Angeles Land District, California, selected by the Southern Pacific Railroad Company of California.

The undersigned, the duly authorized Land Agent of the Southern Pacific Railroad Company, of California, under and by virtue of the 23d Section of the Act of Congress, approved March 3, 1871, entitled "An Act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," and under and by virtue of the Act of Congress, approved July 27, 1866, entitled an Act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast, and the further Act,

approved July 25, 1868, entitled, "An Act to extend the time for the construction of the Southern Pacific Railroad in the State of California, and the Joint Resolution of Congress, approved June 28, 1870, "Concerning the Southern Pacific Railroad of California," and under and in pursuance of the rules and regulations prescribed by the Commissioner of the General Land Office, hereby makes and files the following list of selections of public lands claimed by the said company as inuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said Acts of Congress, and the location of the line of route of the railroad and telegraph of said company; being in part for the First (1st) section (fifty (50) miles) of the same, commencing at a point N.W. $\frac{1}{4}$, Sec. 3, T. 2 N., R. 15 W., San Bernardino Base and Meridian and ending at the termination of the 50th mile therefrom, at a point in N.E. $\frac{1}{4}$ Sec. 27, T. 10, R. 9 W., San Berdo. B. & M., which said section of road and telegraph has been duly accepted by the President of the United States, as provided in the aforesaid Acts and Joint Resolution of Congress. The selections being particularly described as follows:

BENJAMIN B. REDDING,
Land Agent of the Southern Pacific Railroad Company.

G. 130. (4-5-92-500.)

Railroad List.

North of Base Line, and West of San Bernardino
Principal Meridian.

No.	Part of Section.	No. of Section.	No. of Township.	No. of Range.	Area.		Fees of Register and Receiver.
					Acre.	100.	
	S $\frac{1}{2}$	3	4 N	7 W	320 00	4 00	
	All of fract.	5	"	"	641 96	8 00	
	All of fract.	7	"	"	618 28	7 50	
	All of	9	"	"	640 00	8 00	
	All of	11	"	"	640 00	8 00	
	All of	15	"	"	640 00	8 00	
	All of	17	"	"	640 00	8 00	
	Frac. N $\frac{1}{2}$	19	"	"	310 28	4 00	
	All of	21	"	"	640 00	8 00	
	NW $\frac{1}{4}$	27	"	"	160 00	2 00	
	All of fract.	1	4 N	8 W	637 56	8 00	
	All of fract.	3	"	"	637 72	8 00	
	All of fract.	5	"	"	646 88	8 00	
	Frac. NW $\frac{1}{4}$	7	"	"	162 00	2 00	
	NE $\frac{1}{4}$	9	"	"	160 00	2 00	
	All of	11	"	"	640 00	8 00	
	All of	13	"	"	640 00	8 00	
	NW $\frac{1}{4}$	3	4 N	9 W	160 00	2 00	
	All of fract.	5	"	"	646 46	8 00	
	Frac. N $\frac{1}{2}$	7	"	"	324 40	4 00	
	N $\frac{1}{2}$	9	"	"	320 00	4 00	
Forward, acres,					10,225 54	\$127 50	

G. 130. (4-5-92-500.)

Railroad List.

North of Base Line, and West of San Bernardino
Principal Meridian.

No.	PART OF SECTION.	No. of Section.	No. of Township.	No. of Range.	AREA.		Fees of Register and Receiver
					Acres.	100	
	Forward, acres				102	25	\$127.50
	Fracl. NE $\frac{1}{4}$	1	4 N	10 W	160	45	2 00
	Fracl. NW $\frac{1}{4}$	1	"	"	161	35	2 00
	N $\frac{1}{2}$ of SW $\frac{1}{4}$	1	"	"	80	00	1 00
	Fracl. NE $\frac{1}{4}$	3	"	"	163	36	2 00
	W $\frac{1}{2}$	11	"	"	320	00	4 00
	All of	25	5 N	9 W	640	00	8 00
	S $\frac{1}{2}$	27	"	"	320	00	4 00
	S $\frac{1}{2}$	29	"	"	320	00	4 00
	Fracl. N $\frac{1}{2}$	31	"	"	316	54	4 00
	Fracl. N $\frac{1}{2}$ of SW $\frac{1}{4}$	31	"	"	79	14	1 00
	N $\frac{1}{2}$ of SE $\frac{1}{4}$	31	"	"	80	00	1 00
	All of	33	"	"	640	00	8 00
	All of	35	"	"	640	00	8 00
	SW $\frac{1}{4}$	17	5 N	10 W	160	00	2 00
	All of fracl.	19	"	"	617	84	7 50
	All of	21	"	"	640	00	8 00
	S $\frac{1}{2}$	23	"	"	320	00	4 00
	S $\frac{1}{2}$	25	"	"	320	00	4 00
	All of	27	"	"	640	00	8 00
	NE $\frac{1}{4}$	29	"	"	160	00	2 00
	NE $\frac{1}{4}$	33	"	"	160	00	2 00
	Forward, acres				17,164	22	\$214 00

1352 SOUTHERN PACIFIC RAILROAD CO., ET AL.,

G. 130. (4-5-92-500.)

Railroad List.

North of Base Line, and West of San Bernardino
Principal Meridian.

No.	PART OF SECTION.	NO. OF SECTION. No. of No. of Town. Range.	AREA.		Fees of Register and Receiver.
			ACRES	100	
	Forward, acres,		17,164	22	\$214 00
All of		35 5 N 10W	640	00	8 00
SW $\frac{1}{4}$		3 5 N 11W	160	00	2 00
All of fract.		5 " "	679	40	8 50
All of fract.		7 " "	614	88	8 00
All of		9 " "	640	00	8 00
W $\frac{1}{2}$		11 " "	320	00	4 00
All of		13 " "	640	00	8 00
All of		15 " "	640	00	8 00
All of		17 " "	640	00	8 00
Fracl. NW $\frac{1}{4}$		19 " "	149	32	2 00
NE $\frac{1}{4}$		21 " "	160	00	2 00
All of fract.		1 5 N 12W	841	54	10 50
All of FracL.		3 " "	850	28	10 50
All of		11 " "	640	00	8 00
All		13 " "	640	00	8 00
SE $\frac{1}{4}$		15 " "	160	00	2 00
E $\frac{1}{2}$		19 " "	320	00	4 00
FracL. SW $\frac{1}{4}$		19 " "	161	92	2 00
NW $\frac{1}{4}$		23 " "	160	00	2 00
All of		27 " "	640	00	8 00
All of		29 " "	640	00	8 00
Forward, acres,			27501	96	\$343 50

G. 130. (4-5-92-500.)

Railroad List.

North of Base Line, and West of San Bernardino
Principal Meridian.

No.	PART OF SECTION.	No. of Sec.	No. of Town.	No. of Range.	AREA Acres.	ICO.	Fees of Register and Receiver.
	Forward, acres.				27,501 96		\$343 50
E $\frac{1}{2}$		31	5 N	12 W	320 00		4 00
Fracl. NW $\frac{1}{4}$		31	"	"	163 25		2 00
All of		33	"	"	640 00		8 00
N $\frac{1}{2}$		25	5 N	13 W	320 00		4 00
Fracl. W $\frac{1}{2}$		19	6 N	11 W	325 00		4 00
W $\frac{1}{2}$		29	"	"	320 00		4 00
All of fracl.		31	"	"	641 80		8 00
W $\frac{1}{2}$		33	"	"	320 00		4 00
All of		25	6 N	12 W	640 00		8 00
E $\frac{1}{2}$		35	"	"	320 00		4 00
S $\frac{1}{2}$ of NW $\frac{1}{4}$		35	"	"	80 00		1 00
SW $\frac{1}{4}$		35	"	"	160 00		2 00
Total, acres,					31,752 01		\$396 50

STATE OF CALIFORNIA,
City and County of San Francisco. } ss.

I, Benjamin B. Redding, being duly sworn, depose
and say: that I am the Land Agent of the Southern
Pacific Railroad Company; that the foregoing list of

lands which I hereby select, is a correct list of a portion of the public lands claimed by the said Southern Pacific Railroad Company as inuring to it, to aid in the construction of the railroad of said company from San Fernando to Spadra, for which a grant of lands was made by the Acts of Congress approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, as aforesaid; that the said lands are vacant, unappropriated, and are not interdicted mineral nor reserved lands, and are of the character contemplated by the grant, being within the limits the exterior ten (10) miles, indemnity belt on each side of the line of route for a continuous distance of fifty (50) miles, being for the first (1st) section of said road, starting from a point in the N. W. $\frac{1}{4}$ Sec. 3, T. 2 N., R. 15 W., San Bernardino Base and Meridian, and ending at the termination of the 50th mile therefrom, at a point in the N. E. $\frac{1}{4}$, Sec. 27, T. 1 S., R. 9 W., San Bernardino Base and Meridian.

BENJAMIN B. REDDING. (Seal.)

Sworn to and subscribed before me this twentieth (20th) day of January, 1876.

CHARLES J. TORBERT,
(Notarial Seal) Notary Public in and for the
City and County of San Francisco, State of California.

United States Land Office,
Los Angeles, Cal., Jany. 28th, 1876.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by

the Southern Pacific Railroad Company, under the grant to the said Southern Pacific Railroad Company by Acts of Congress, approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, above mentioned, and selected by Benjamin B. Redding, the duly authorized agent; and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limits of the exterior ten-mile indemnity belt on each side; and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands, nor claimed as swamp lands; nor is there any home-stead, pre-emption, State, or other valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows an assessment of the fees payable to us allowed by the Act of Congress, approved July 1, 1864, and contemplated by the circular of instructions dated January 24, 1867, addressed by the Commissioner of the General Land Office to Registers and Receivers of the United States Land Offices; and that the said Company have paid to the undersigned, the Receiver, the full sum of three hundred and ninety-six 50 (396 50) dollars in full payment and discharge of said fees.

ALFRED JAMES, Register.

J. W. HAVERSTICK, Receiver.

United States Land Office,

California,

188

LIST No.....

Lands selected by the Southern Pacific
Railroad Company.

Indemnity Limits.

(5 6.89-500.)

List of Lands lost by the Southern Pacific Railroad
Company within 20 miles of the line of its railroad
in lieu of which selections were made at Los Angeles,
Cal., upon Indemnity List, No. 1, Jan'y 28th, 1876.

Railroad List.

North of Base Line, and West of San Bernardino
Principal Meridian.

List of Selections made at Los Angeles, California,
Jan'y 28, 1876, upon Indemnity List, No. 1.

No.	PART OF SECTION	NO. OF SECTION.	No. of Town.	No. of Range	AREA. Acres too	Fees of Register and Receiver.
	S $\frac{1}{2}$	3	4 N	7 W	320 00	
All	fract	5	"	"	641 96	
All	"	7	"	"	618 28	
All		9	"	"	640 00	
All		11	"	"	640 00	
All		15	"	"	640 00	
All		17	"	"	640 00	

No.	PART OF SECTION.	No. of Section.	No. of Town.	No. of Range.	AREA.		Fees of Register and Receiver.
					Acres.	100	
	Fracel N $\frac{1}{2}$	19	4 N	7 W	310 28		
	All	21	"	"	640 00		
	N W $\frac{1}{4}$	27	"	"	160 00		
	All fracel	1	4 N	8 W	637 56		
	All "	3	"	"	637 72		
	All "	5	"	"	646 88		
	N E $\frac{1}{4}$	9	"	"	160 00		
	All	11	"	"	640 00		
	All	13	"	"	640 00		
						8,612 68	

Note—The entire list was for 31,752.01 acres, and the S. P. R. R. Co. received patent for the full amount, but it has since been found that 23,139.33 acres of the land are in the *granted* limits. The selection list was made in accordance with certified copy from Comr. Genl. Land Office of the map of definite limits opposite Section 1, S. P. R. R. Branch Line, placing the tracts in the indemnity belt. Subsequently, when Section 4 of said railroad was constructed, the Map of Definite Limits opposite this section placed 23,139.33 acres as above, inside of the 20-mile or granted limits.

South of Base Line, and West of San Bernardino
Principal Meridian.

Tracts within 20 miles of the line of said railroad, in
lieu of which the selected tracts are taken.

No.	PART OF SECTION	NO. OF SECTION.	No. of Town.	No. of Range	AREA.	
					Acres	100
	E $\frac{1}{2}$	5	2 S	7 W	230	00
All		7	"	"	640	00
All		9	"	"	640	00
All		17	"	"	640	00
All		19	"	"	640	00
All		25	"	"	640	00
All		29	"	"	640	00
Fracd. NE $\frac{1}{4}$		5	3 S	5 W	183	50
SE $\frac{1}{4}$ of SE $\frac{1}{4}$		7	"	"	40	00
S $\frac{1}{2}$ of SW $\frac{1}{4}$		29	3 S	3 W	80	00
All		21	2 S	7 W	640	00
SW $\frac{1}{4}$		5	2 S	7 W	160	00
All that part in Jumpa						
Rancho		27	2 S	5 W	638	38
All		7	2 S	11 W	640	00
All		1	2 S	8 W	640	00
NW $\frac{1}{4}$		5	2 S	7 W	160	00
All		3	2 S	8 W	640	00
All		9	"	"	640	00
						8621
						88

UNITED STATES }
 vs. }
S. P. R. R. Co., ET AL. } No. 184.

I hereby certify that I have compared the annexed copy of Defendants' Exhibit before the Special Examiner, No. 50, with the original on file in the office of the Land Department of the Southern Pacific R. R. Co., and find it to be a full, true and correct copy thereof, so far as it involves the lands in suit, and omitting lands that are not in issue.

STEPHEN POTTER,
Special Examiner.

San Francisco, October 13th, 1893.

[Endorsed]: (Marked) Defendants' Exhibit before the Special Examiner, No. 50. Stephen Potter, Special Examiner. Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Br. & R.

United States Land Office,
Los Angeles, California, Oct. 3d, 1887.

J. D. Bethune, Reg.

LIST NO. 25.

Lands selected by the
Southern Pacific Railroad Company,

Indemnity Limits.

Branch Line.

(5-6-89-500.)

Ex. No. 51.

Office of the
Southern Pacific Railroad Company,
San Francisco, California.

I, Joseph L. Willcutt, Secretary of the Southern Pacific Railroad Company, do hereby certify that Jerome Madden was appointed Land Agent of the said Southern Pacific Railroad Company by the Board of Directors of said company, at a meeting held on the tenth (10th) day of May, A. D. 1876, and that since that time he has been continuously, and is now, the Land Agent of the said Southern Pacific Railroad Company.

In TESTIMONY WHEREOF, I have hereunto set my hand and affixed the corporate seal of the said Southern Pacific Railroad Company, the 28th day of September, A. D. 1887.

(Corporate Seal) JOSEPH L. WILLCUTT,
Secretary of the Southern Pacific Railroad
Company. *

LIST OF LANDS

In the Los Angeles Land District, California, selected by the Southern Pacific Railroad Company of California.

THE UNDERSIGNED, the duly authorized Land Agent of the Southern Pacific Railroad Company of California, under and by virtue of the 23d section of the Act of Congress, approved March 3, 1871, entitled "An Act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," and under and by virtue of the

Act of Congress, approved July 27, 1866, entitled, "An Act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," and the further Act, approved July 25, 1868, entitled, "An Act to extend the time for the construction of the Southern Pacific Railroad in the State of California," and the Joint Resolution of Congress, approved June 28, 1870, "Concerning the Southern Pacific Railroad of California," and under and in pursuance of the rules and regulations prescribed by the Commissioner of the General Land Office, hereby makes and files the following list of selections of public lands claimed by the said company as inuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said Acts of Congress, and the location of the line of route of the railroad and telegraph of said company; being in part for the First, Second, Third and Fourth Sections (two hundred and twenty-eight and 59-100 (228 59-100) miles of the same, commencing at Mojave and ending at Indian Wells (Indio), which said sections of road and telegraph have been duly accepted by the President of the United States, as provided in the aforesaid Acts and Joint Resolution of Congress. The selections being particularly described as follows:

JEROME MADDEN,
Land Agent of the Southern Pacific Railroad
Company.

Railroad List.

North of Base Line, and West of San Bernardino
Principal Meridian.

List of selections made at Los Angeles, California,
upon this Indemnity List, No. 25.

No.	PART OF SECTION.	No. of Section.	No. of Township.	No. of Range.	AREA.		Fees of Register and Receiver.
					Acres.	100.	
	All fractl.	1	3 N	5 W	635	68	
	All fractl.	3	"	"	632	70	
	All fractl.	5	"	"	631	92	
	Fracel. N $\frac{1}{2}$	7	"	"	316	57	
	N $\frac{1}{2}$	9	"	"	320	00	
	N $\frac{1}{2}$	11	"	"	320	00	
	All fractl.	1	3 N	6 W	638	40	
	Fracel. N $\frac{1}{2}$	3	"	"	316	83	
	NE $\frac{1}{4}$	5	"	"	160	00	
	NE $\frac{1}{4}$	7	"	"	160	00	
	N $\frac{1}{2}$ of NE $\frac{1}{4}$	11	"	"	80	00	
	Fracel. N $\frac{1}{2}$, NW						
	$\frac{1}{4}$ of SE $\frac{1}{4}$, E $\frac{1}{2}$						
	of SE $\frac{1}{4}$, N $\frac{1}{2}$						
	of SW $\frac{1}{4}$	1	3 N	8 W	480	84	
	All fractl.	3	"	"	640	28	
	All	11	"	"	640	00	
	All fractl.	1	4 N	5 W	639	63	
	All fractl.	3	"	"	639	08	
	All fractl.	5	"	"	635	20	
	All fractl.	7	"	"	595	12	
	All	9	"	"	640	00	

No.	PART OF SECTION.	No. of Section.	No. of Township.	No. of Range.	AREA.		Fees of Register and Receiver
					Acres.	100	
All		11	4 N	5 W	640	00	
All		13	"	"	640	00	
All		15	"	"	640	00	
All		17	"	"	640	00	
All fract.		19	"	"	610	12	
All		21	"	"	640	00	
All		23	"	"	640	00	
All		25	"	"	640	00	
All		27	"	"	640	00	
All		29	"	"	640	00	
All fract.		31	"	"	620	90	

1364 SOUTHERN PACIFIC RAILROAD CO., ET AL.,

North of Base Line, and West of San Bernardino
Principal Meridian.

Tracts within 20 miles of the line of said Railroad, in
lieu of which the selected tracts are taken.

No.	PART OF SECTION.	NO. OF SECTION.	No. of Township.	No. of Range.	AREA.	
					Acres.	100
	All that part in Rancho Azusa	27	1 N	10 W	638	73
	All that part in Rancho Ex-Mission San Fernando	5	1 N	14 W	632	61
	All that part in Rancho Providencia and tract called Cahuenga			15	1 N	14 W 637 08
	All that part in Rancho Addition to San Jose	33	1 N	9 W	315	44
N $\frac{1}{2}$		23	1 N	4 W	320	00
S $\frac{1}{2}$		23	"	"	320	00
All		25	"	"	640	00
	All that part in Rancho San Pascual	3	1 N	12 W	265	96
Lot 3		31	1 N	9 W	38	57
Lot		31	"	"	12	00
NE		27	1 N	4 W	160	00
NW $\frac{1}{4}$		27	"	"	160	00
N $\frac{1}{2}$ of SE $\frac{1}{4}$		27	"	"	80	00
S $\frac{1}{2}$ of SE $\frac{1}{4}$, SW $\frac{1}{4}$		19	"	"	240	00
S $\frac{1}{2}$ of SE $\frac{1}{4}$, SW $\frac{1}{4}$		27	"	"	240	00
All		29	"	"	640	00

No.	Part of Section.	No. of Section	No. of Township	No. of Range	Area.	
					Acres.	100
All		31	1 N	4W	640	00
All		17	1 N	12W	640	00
All		19	"	"	640	00
All that part in Rancho San Pascual		11	"	"	508	25
All that part in Rancho San Fernando		21	3 N	15W	41	24
SE $\frac{1}{2}$ of SE $\frac{1}{4}$		7	9 N	13W	80	00
All that part in Rancho Santa Anita and other private grants		35	1 N	12W	558	60
NE $\frac{1}{4}$ of NE $\frac{1}{4}$		21	"	"	40	00
All		23	"	"	640	00
All		25	"	"	640	00
All		27	"	"	640	00
All		29	"	"	640	00
All		31	"	"	640	00
All that part in Rancho San Fernando		1	2 N	15W	409	91
NW $\frac{1}{4}$, NW $\frac{1}{4}$ of NE $\frac{1}{4}$		21	1 N	2W	200	00
All		1	1 N	14W	640	00
All		7	"	"	640	00
All		13	"	"	640	00
All		17	"	"	640	00
All		19	"	"	640	00
All that part in Rancho Ex-Mission San Fernando		31	"	"	323	60
All that part in Rancho La Canada		21	2 N	13W	272	32
All that part in Rancho San Francisco		1	3 N	17W	23	30

1366 SOUTHERN PACIFIC RAILROAD CO., ET AL.,

Railroad List.

North of Base Line and West of San Bernardino
Principal Meridian.

List of selections made at Los Angeles, California,
upon this Indemity List, No. 25.

No.	PART OF SECTION.	No. of Section.	No. of Township.	No. of Range.	AREA.		Fees of Register and Receiver.
					Acres.	100.	
All		33	4 N	5 W	640	00	
All		35	"	"	640	00	
All fract.		1	4 N	6 W	645	62	
All fract.		3	"	"	650	99	
All fract.		5	"	"	641	08	
All fract.		7	"	"	601	60	
All		9	"	"	640	00	
All		11	"	"	640	00	
All		13	"	"	640	00	
All		15	"	"	640	00	
All		17	"	"	640	00	
All fract.		19	"	"	608	32	
All		21	"	"	640	00	
All		23	"	"	640	00	
All		25	"	"	640	00	
All		27	"	"	640	00	
All		29	"	"	640	00	
All fract		31	"	"	624	58	
All		33	"	"	640	00	
All		35	"	"	640	00	
SE $\frac{1}{4}$ and E $\frac{1}{2}$ of							
SW $\frac{1}{2}$		29	5 N	8 W	240	00	
All		33	"	"	640	00	
All		35	"	"	640	00	

No.	Part of Section.	No. of Section.	No. of Township.	No. of Range.	Area. Acres. 100.	Fees of Register and Receiver.
	*All	9	7 N	17 W	640 00	
	†All	11	" "	"	640 00	
	‡All fract.	7	7 N	18 W	642 52	
	§All	9	" "	"	640 00	
	All	17	" "	"	640 00	
	All	21	" "	"	640 00	
	All	27	" "	"	640 00	
	All	11	7 N	19 W	640 00	
	All	13	" "	"	640 00	

*Only the S. $\frac{1}{2}$, Sec. 9, T. 7 N., R. 17 W., S. B. M., 320 acres, is involved in this suit, Case No. 184, U. S. vs. S. P. R. R. Co.

†Only the S. $\frac{1}{2}$, Sec. 11, T. 7 N., R. 17 W., S. B. M., 320 acres, is involved in this suit, Case No. 184, U. S. vs. S. P. R. R. Co.

‡Only the S. $\frac{1}{2}$, Sec. 7, T. 7 N., R. 18 W., S. B. M., 321.23 acres, is involved in this suit, Case No. 184, U. S. vs. S. P. R. R. Co.

§Only the S. $\frac{1}{2}$, Sec. 9, T. 7 N., R. 18 W., S. B. M., 320.00 acres, is involved in this suit, Case No. 184, U. S. vs. S. P. R. R. Co.

||Only the S. $\frac{1}{2}$, Sec. 11, T. 7 N., R. 19 W., S. B. M., 320 acres, is involved in this suit, Case No. 184, U. S. vs. S. P. R. R. Co.

1368 SOUTHERN PACIFIC RAILROAD CO., ET AL.,

North of Base Line, and West of San Bernardino
Principal Meridian.

Tracts within 20 miles of the line of said Railroad, in
lieu of which the selected tracts are taken.

No.	PART OF SECTION.	No. of SECTION	No. of Township	No. of Range	AREA. Acres 100.
	All	21	1 N	14 W	640 00
	All	23	" "	"	640 00
	All that part in Rancho Santa Anita	23	1 N	11 W	358 02
	All that part in Rancho Temescal	11	4 N	18 W	203 67
	S $\frac{1}{2}$ of NE $\frac{1}{4}$	21	1 N	12 W	80 00
	All that part in Rancho San Fernando	25	3 N	15 W	308 71
	All that part in Rancho San Francisco	11	4 N	17 W	345 09
	All	33	1 N	12 W	640 00
	S $\frac{1}{2}$	21	" "	"	320 00
	NE $\frac{1}{4}$, NE $\frac{1}{4}$ of NW $\frac{1}{4}$,				6 00
	S $\frac{1}{2}$ of NW $\frac{1}{4}$	23	2 N	15 W	280 00
	All	25	1 N	14 W	640 00
	All	19	2 N	13 W	640 00
	All	29	" "	"	640 00
	All	31	" "	"	640 00
	All	33	" "	"	640 00
	All that part in Ranchos Ex-Mission San Fernando and Prov- idencia	27	1 N	14 W	561 51
	NW $\frac{1}{4}$ of NW $\frac{1}{4}$	23	2 N	15 W	40 00

No.	PART OF SECTION.	No. of SECTION.	No. of TOWNSHIP.	No. of Range.	AREA.	
					No. of TOWNSHIP.	Acres. 100
All		7	2 N	14W	640	00
All		15	"	"	640	00
All		17	"	"	640	00
All		19	"	"	640	00
All		31	"	"	640	00
All		35	"	"	640	00
All		3	2 N	15W	640	00
All		5	"	"	640	00
NW $\frac{1}{4}$ of NW $\frac{1}{4}$		9	"	"	40	00
NW $\frac{1}{4}$		15	"	"	160	00
NE $\frac{1}{4}$ of SW $\frac{1}{4}$		27	"	"	40	00
All		31	3 N	15W	640	00
All		33	"	"	640	00
All		5	3 N	17W	640	00
All		7	"	"	640	00
All		9	"	"	640	00
All		15	"	"	640	00
All		17	"	"	640	00
All		19	"	"	640	00
All		21	"	"	640	00
All		27	"	"	640	00
All		29	"	"	640	00

G. 96. (7-25-91-250.)

STATE OF CALIFORNIA,
City and County of San Francisco. } ss.

I, Jerome Madden, being duly sworn, depose and say: That I am the Land Agent of the Southern Pa-

cific Railroad Company; that the foregoing list of lands which I hereby select is a correct list of a portion of the public lands claimed by the said Southern Pacific Railroad Company as inuring to it, to aid in the construction of the railroad of said company from Mojave to Indian Wells (Indio), for which a grant of lands was made by the Acts of Congress, approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870 as aforesaid, that the said lands are vacant, unappropriated, and are not interdicted mineral nor reserved lands, and are of the character contemplated by the grant, being within the limits of the exterior ten (10) miles, idemnity belt, on each side of the line of route for a continuous distance of two hundred and twenty-eight 59-100 (228 59-100), miles, being for the first, second, third and fourth sections of said road, starting from a point in NE. 1-4 Sec. 17, T. 11 N., R. 12 W., S. B. B. & M., and ending at a point in SW. 1-4 Sec. 25, T. 5 S., R. 7 E., S. B. B. & M., and that the specific losses for which indemnity is claimed are truly set forth and described in said list, and that said losses have not heretofore been indemnified in any manner.

JEROME MADDEN. (Seal)

Sworn to and subscribed before me this 28th day of September, 1887.

Witness my hand and official seal.

(Notarial Seal)

HOLLAND SMITH,
Notary Public in and for the City and County
of San Francisco, State of California.

United States Land Office,

Los Angeles, Cal., Oct. 3d, 1887.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Southern Pacific Railroad Company, under the grant to the said Southern Pacific Railroad Company, by Acts of Congress, approved March 3, 1871, July 27, 1866, July 25, 1868, and June 28, 1870, above mentioned and selected by Jerome Madden, the duly authorized agent; and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limit of the exterior ten (10) miles, indemnity belt, one on each side; and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands, nor claimed as swamp lands; nor is there any homestead, pre-emption, State, or other valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows an assessment of the fees payable to us allowed by the Act of Congress, approved July 1, 1864, and contemplated by the circular of instructions dated January 24, 1867, addressed by the Commissioner of the General Land Office to Registers and Receivers of the United States Land Offices; and that the said company have paid to the undersigned, the Receiver, the full sum of thirteen hundred and ninety three dollars (\$1,393.00) dollars, in full payment and discharge of said fees.

J. D. BETHUNE, Register.

I. H. POLK, Receiver.

San Francisco, California, Sept. 28th, 1887.

In presenting with this list of selections a list of tracts lying within 20 miles of the Southern Pacific Railroad of California, lost to the company in lieu of which the selections are made, the said Company respectfully claims that it is not required by law to specify lost land when selecting indemnity, because the grant to said company by Congress is of a quantity of 12,800 acres of land per mile of road, and the fact is notorious that the company has not received patents for one-half as much land as is due it under the orders of the President of the United States accepting its railroad according to law.

The company also pays the expenses of surveying these lands under protest, because it claims to be exempted from such payment by provisions of the said grant of lands to it by Congress.

JEROME MADDEN,
Land Agent So. Pac. R. R. Co.

G. 396. (9-14-87-400.)

United States Surveyor-General's Office,
San Francisco, California,

September 29th, 1887.

I, R. P. Hammond, Jr., Surveyor-General for the United States, in and for the State of California, hereby report and certify that the Southern Pacific Railroad Company has this day filed with me, at San Francisco, a duplicate certificate of Deposit No. 103, dated September 29th, 1887, to the credit of the United States, showing that the sum of \$3,760.29 has been deposited as cost of survey, and \$1,253.43 for office

work, and that the said sums are the correct amount of the cost of survey and office work for the lands mentioned and described in the list of lands hereto annexed to the extent of said list.

Survey.....	\$3,760.29
Office work.....	1,253.43
	<hr/>
	\$5,013.72

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal.

(Seal of the Surveyor-

R. P. HAMMOND, JR.

General's Office.)

Surveyor-General.

UNITED STATES,

vs.

No. 184.

S. P. R. R. Co., ET AL. }
}

I hereby certify that I have compared the annexed copy of Defendants' Exhibit before the Special Examiner, No. 51, with the original on file in the office of the Land Department of the Southern Pacific R. R. Co., and find it to be a full, true and correct copy thereof, so far as it involves the lands in suit, and omitting lands that are not in issue.

STEPHEN POTTER,
Special Examiner.

San Francisco, October 13th, 1893.

[Endorsed]: (Marked) Defendants' Exhibit before the Special Examiner, No. 51. Stephen Potter, Special Examiner. Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

F.

(4-207 a.)

M. N.

W. C. E.

Department of the Interior,

General Land Office,

Washington, D. C., April 18th, 1891.

I, W. M. Stone, Acting Commissioner of the General Land Office, do hereby certify that the annexed map is a true and literal exemplification of the one filed in the Department on March 8, 1872, by the attorney for the Atlantic and Pacific R. R. Company, and transmitted to this office by departmental letter dated March 9, 1872, and described therein as a map showing the preliminary location of the line of said railroad from a point on the western boundary line of Los Angeles county, California, to a point in Township 7 North, Range 7 East, of San Bernardino Base and Meridian, in said State.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

(Seal)

W. M. STONE,

Acting Commissioner of the General Land Office.

14,514 b-1m.

F.

(4-207 a.)

M. N.

W. C. E.

Department of the Interior,

General Land Office,

Washington, D. C., April 18th, 1891.

I, W. M. Stone, Acting Commissioner of the General Land Office, do hereby certify that the annexed is a true and literal exemplification of the one filed in the Department August 15, 1872, by the attorney for the Atlantic and Pacific Railroad Company, and transmitted to this office by departmental letter dated April 16, 1874, and described therein as a map designating the line of said railroad in the County of San Bernardino, State of California, and to the east side of the Colorado River, in Arizona Territory.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

(Seal.)

W. M. STONE,

Acting Commissioner of General Land Office.

14514 b-1 m.

1376 SOUTHERN PACIFIC RAILROAD CO., ET AL.,

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER.
No. 65.

Department of the Interior,
Washington, D. C., April 3d, 1871.

Sir: The map received with your letter of the 22nd ultimo, showing the route of the Southern Pacific Railroad, "from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad, at or near the Colorado River," has been sent to the Commissioner of the General Land Office, with directions to withdraw the lands as provided in the 12th section of the Act to incorporate said Texas Pacific Railroad, approved March 3d, 1871.

Very respectfully, your obt. servant,

WALTER H. SMITH,

Charles Crocker, Esq., Acting Secretary.
Pres. Southern Pac. R. R. Co.
54 William St., N. Y.

[Endorsed]: Walter H. Smith, Acting Secretary,
Washington, Apl. 3, 1871.

Map sent to Commissioner with direction to withdraw certain lands.

(Marked "Defendants' Exhibit before the Special Examiner, No. 65, Stephen Potter, Special Examiner.")

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, Sept. 30th, 1893.

[Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Ex. No. 65.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER.

No. 66.

Pac. R. R.

Department of the Interior,

Washington, D. C., August 5th, 1868.

SIR: I invite your attention to an Act, entitled "An Act relative to filing reports of Railroad Companies," approved June 25th, 1868.

It will be perceived that the reports required by the Act of July 1st, 1862, and the Acts amendatory thereof, to be made to the Secretary of the Treasury, are hereafter to be made to the Secretary of the Interior "on or before the first day of October of each year."

Very respectfully, your obt. servant,

O. H. BROWNING,

President of the

Secretary.

Southern Pacific R. R. Co.,

San Francisco, Cal.

[Enclosure.]

(Public—No. 51.)

An Act relative to filing reports of Railroad Companies.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled: That the reports required to be made to the Secretary of the Treasury on or before the first day of July of each year, by the corporations

created by or entitled to subsidies under the provisions of an Act entitled, "An Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military and other purposes," approved July first, eighteen hundred and sixty-two, and the acts supplemental thereto and amendatory thereof, shall hereafter be made to the Secretary of the Interior, on or before the first day of October of each year. Said reports shall furnish full and specific information upon the several points mentioned in the twentieth section of the said act of eighteen hundred and sixty-two, and shall be verified as therein prescribed, and on failure to make the same, as herein required, the issue of bonds or patents to the company in default shall be suspended until the requirements of this act shall be complied with by such company. And the reports hitherto made to the Secretary of the Treasury under the said act of July first, eighteen hundred and sixty-two, shall be transferred and delivered by him to the Secretary of the Interior, to be filed by him.

Sec. 2. And be it further enacted: That the corporations created by the provisions of the Acts of Congress approved July second, eighteen hundred and sixty-four, and July twenty-seventh, eighteen hundred and sixty-six, and known as the Northern Pacific Railroad Company, the Atlantic and Pacific Railroad Company, and the Southern Pacific Railroad Company, shall make reports to the Secretary of the Interior on or before the first of October of each

year, as are required to be made by the Union Pacific Railroad and branches, under the provisions of the first section of this Act, and on failure to do so, shall be subject to the like suspension.

Sec. 3. And be it further enacted: That the reports required from the Commissioners appointed to examine and report in relation to the road of any of the corporations, whereto reference is made in this Act, shall be addressed to and filed in the Department of the Interior; and all such reports heretofore made shall be transferred to and filed in said Department of the Interior; and so much of any and all acts as requires any reports from such companies, or any officers thereof, to be made to the Secretary of the Treasury, is hereby repealed.

Sec. 4. And be it further enacted: That, in addition to the eight subjects referred to, in section twenty of the Act of July, eighteen hundred and sixty-two, to be reported upon, there shall also be furnished annually to the Secretary of the Interior, all reports of engineers, superintendents, or other officers who make annually reports to any of said railroad companies.

Approved June 25, 1868.

U. S. Statutes, Chapter LXXVII, page 79.

Chapter CXX, page 498.

Sec. 20.

(Marked "Defendants' Exhibit before the Special Examiner, No. 66. Stephen Potter, Special Examiner.")

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, Sept. 30th, 1893.

[Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER.

No. 67.

Pac. R. R.

Department of the Interior,

Washington, D. C., September 26th, 1868.

Sir: Please furnish the Secretary of the Interior before the 15th proximo a report of the progress and condition of your road, to be used in the preparation of his annual report to the President.

Very respectfully, your obt. servant,

W. T. OTTO,

T. G. Phelps, Esq., Acting Secretary.

Pres. Southern Pac. R. R. Co.

San Mateo, California.

(Marked "Defendants' Exhibit before the Special Examiner, No. 67. Stephen Potter, Special Examiner.")

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, Sept. 30th, 1893.

[Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Ex. No. 67.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER.

No. 68. Pac. L. Agt. R.R.

Department of the Interior,

Washington, D. C., August 31st, 1870.

SIR: The Act approved June 25, 1868, requires the annual report of your company to be filed in this department on or before the first day of October of each year.

It is desired to have the reports of the different companies brought up to the same date, the 30th June, the end of the fiscal year.

You are requested to have the report of your company for the past year brought up to that date, and filed on or before the 1st October next.

Very respectfully, your obt. servant,

J. D. Cox,

Lloyd Tevis, Esq.,

Secretary.

Pres. Southern Pac. R. R. Co.,

San Francisco, Cal.

(Marked "Defendants' Exhibit before the Special Examiner, No. 68, Stephen Potter, Special Examiner.")

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,

Special Examiner.

San Francisco, Sept. 30th, 1893.

[Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke,
Clerk.

Ex. No. 68.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER.

No. 69.

Z. B. S.

Department of the Interior,

Office of the Secretary,

Washington, D. C., 1st Sept., 1876.

Sir: I enclose herewith a printed circular, issued by this department 26 Oct., 1872, concerning the annual reports of railroad companies, which the law requires to be filed in this department.

I desire that, in making up the annual report of your company, you will see that it conforms in every respect to the requirements of this circular, and that it be furnished to the department on or before the 1st proximo.

Very respectfully,

Z. CHANDLER,

Secretary.

Chas. Crocker, Esq.,

Pres. Southern Pac. R. R. Co.,
9 Nassau St., New York.

[Endorsed]: Hon. Z. Chandler, Secy. of the Interior,
to Chas. Crocker, Pres. S. P. R. Co. Annual
Report of Co. to Secy. of Int.

[Enlosure] •

Department of the Interior,
Washington, D. C., October 26, 1872.

Gentlemen: The following named railroad companies are required by the 20th Section of the Act of 1st July, 1862, (12 Statutes, 498), to make annual reports to the Secretary of the Interior under certain specified heads: The Union Pacific, Central Pacific, Western Pacific (now consolidated with Central Pacific), Central Branch Union Pacific, Denver Pacific, Sioux City and Pacific, and Kansas Pacific, and the Act of 25th June, 1868 (15 Statutes, 79), requires such reports from the Northern Pacific, Southern Pacific, and the Atlantic and Pacific Railroad Companies.

These reports are required by said 20th Section to show—

“First. The names of the stockholders and their places of residence, so far as the same can be ascertained;

“Second. The names and residences of the directors, and all other officers of the company;

“Third. The amount of stock subscribed, and the amount thereof actually paid in;

“Fourth. A description of the lines of road surveyed, of the lines thereof fixed upon for the construction of the road, and the cost of such surveys;

“Fifth. The amount received from passengers on the road;

“Sixth. The amount received for freight thereon;

“Seventh. A statement of the expense of said road and its fixtures; total and annual.

“Eighth. A statement of the indebtedness of said company, setting forth the various kinds thereof,

which report will be sworn to by the President of said Company."

There is also required from the Atlantic and Pacific Company, by the 13th Section of the Act of 27th July, 1866, (14 Statutes, 297), "An annual report of their proceedings and expenditures, verified by the affidavits of the president and at least six of the directors, a copy of which shall be deposited in the office of (the) Secretary of the Interior." The 4th Section of the Act of 25th June, 1868, (15 Statutes, 79), also requires "That in addition to the eight subjects referred to in section twenty of the Act of July, eighteen hundred and sixty-two, to be reported upon, there shall also be furnished annually to the Secretary of the Interior all reports of engineers, superintendents or other officers who make annual reports to any of said railroad companies." The 1st Section of the said Act of 25th June, 1868, requires the reports of the above-mentioned companies "to be made to the Secretary of the Interior on or before the first day of October of each year," and that they "shall furnish full and specific information upon the several points mentioned in the twentieth Section of the said Act of 1862, and shall be verified as therein prescribed, and on failure to make the same as herein required, the issue of bonds or patents to the Company in default shall be suspended until the requirement of this act shall be complied with by such Company." The 13th Section of the Act of 3d March, 1871, (16 Statutes, 577), requires a sworn report to be made by the Texas & Pac. R. R. Co. to the Secretary of the Interior "by the first day of July" of

each year. Said section requires this report to exhibit "the financial situation of the company, the amount of money received and expended, and the number of miles of road constructed each year; and further the names and residences of the stockholders, of the directors, and of all other officers of the company; the amount of stock subscribed, and the amount thereof actually paid in, a description of the lines of road surveyed and fixed upon for construction, the amount received for passengers and for freight, respectively, on the road, a statement of the expenses of said road and its fixtures, and a true statement of the indebtedness of said company, and the various kinds thereof."

The number of shares of stock held by each director should be given.

B. R. COWEN,

Acting Secretary.

To Presidents of Railroad Companies.

If no such reports are made to the company, it should be so stated in your report.

[Endorsed]: Requirements by Department of the Interior. Sept. 1, 1876.

(Marked "Defendants' Exhibit before the Special Examiner, No. 69, Stephen Potter, Special Examiner".)

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,

Special Examiner.

San Francisco, Sept. 30th, 1893.

[Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke,
Clerk.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER.
No. 70.

Requirements from
Department of the Interior,
Office of Auditor of Railroad Accounts,

Washington, D. C., July 13th, 1878.

Sir: I have the honor to transmit herewith a copy of the Act of Congress, entitled "An Act to create an " Auditor of Railroad Accounts, and for other purposes," approved June 19, 1878, and to call your attention to the requirements of the same.

Under the provisions of this Act, I hereby respectfully request that you direct the Secretary of your company to furnish this office, by return mail, with the names and residences of all the officers and directors of the company, as of date July 1, 1878, and with the business address of the company.

I have further to request that you direct all the officers of your company, in compliance with the requirements of law, to render to this office all information and reports that I may require from time to time, to submit the books and records of the company to my inspection, or that of any person acting in my place or stead, and to furnish transportation over your road for myself or any person acting under my direction, without expense to the United States.

I will thank you also for copies of the full series of your printed reports to stockholders, including that for last year.

I have the honor to further request that this office be furnished, by return mail, or as soon thereafter as possible, with copies of all schedules of "through" and "way" passenger and freight tariffs, or rates in force on the 1st instant, and of such others as have been in force during the year ending June 30, 1878, also of all joint schedules of passenger and freight tariffs agreed upon between your company and other railroad companies, and in force during the same periods; and of all contracts for special rates that have been made by your company with any person, firm, or corporation during the same period.

Very respectfully,

THEO'S FRENCH,

Auditor.

Charles Crocker, Esq.,

President Southern Pacific Railroad Company,
San Francisco, Cal.

Department of the Interior,
Office of Auditor of Railroad Accounts,

Washington, D. C., July 22d, 1878.

SIR: Thirty blanks of Form No. 1, issued by this office, have been forwarded to you by this mail.

I will thank you to have the same filled up to show the condition of the general ledger of your Company at the periods following, viz:

First: On June 30, 1877, after the transfer of balances to "Income Account" or "Profit and Loss" account.

Second: On December 31, 1877, before transfer of balances to "Income Account," if such transfers are made semi-annually.

Third: On June 30, 1878, before transfer of balances to "Income Account."

Fourth: On July 1, 1878, after the transfers, but before any new entries have been made.

Fifth: On July 31, August 31, &c., monthly hereafter.

The columns without headings are not to be written upon, as they are intended for use in this office.

Very respectfully,

THEOS. FRENCH,

Auditor.

Charles Crocker, Esq'r,

Prest. Southern Pac. R. R. Co.,

San Francisco, Cal.

Department of the Interior,

Office of Auditor of Railroad Accounts,

Washington, D. C., July 26th, 1878.

Sir: I have the honor to request that this office be furnished, as early as possible, with copies of all contracts or agreements made by your Company with any Telegraph Company, Sleeping Car Company, Express Company, or Fast Freight Line or Transportation Company, and which are still in force.

Very respectfully,

THEO'S FRENCH,

Charles Crocker, Esq.,

Auditor.

Prest. Southern Pacific R. R. Co.,

San Francisco, Cal.

Department of the Interior,
Office of Auditor of Railroad Accounts,

Washington, D. C., July 29th, 1878.

Sir: I have the honor to request that this office be furnished by return mail with a copy of your by-laws as now in force, and a list of committees as at present composed.

Very respectfully,

THEOS. FRENCH,

Auditor.

Charles Crocker, Esq., Pres't.

Southern Pacific R. R. Co.,

San Francisco, Cal.

Department of the Interior,
Office of Auditor of Railroad Accounts,

Washington, D. C., August 1st, 1878.

Sir: I have the honor to refer you to my letters dated respectively July 13, 22, 24, 26 & 29, 1878, to none of which have I received a reply to this date, and to enclose again copy of the Act of Congress, No. 121, approved June 19, 1878.

By this mail 50 blanks of Form No. 2 of this office have been forwarded to you, upon which I will thank you to direct the Auditor or other proper officer of your company to make reports for six months, respectively, ending June 30, 1877, December 31, 1877, and June 30, 1878, by divisions as separated in your accounts, and by the same divisions monthly hereafter, commencing with July 31, 1878.

In this connection, I have further to state that, as one month has already elapsed without compliance on the part of your company with the requirements of this office made in pursuance of and under the law, I hereby respectfully give notice that, unless compliance with each and every requirement heretofore and hereby again requested, is made within 30 (thirty) days from this date, proceedings will be commenced to collect the penalties under Sect. 5 of the Act, approved June 19, 1878.

Very respectfully,

THEOS. FRENCH,
Auditor.

Charles Crocker, Esq.,

President of the Southern Pacific R. R., Co.,
San Francisco, Cal.

Department of the Interior,
Office of Auditor of Railroad Accounts,

Washington, D. C., August 27, 1878.

Sir: By this mail 50 blanks of Form No. 4 have been forwarded to you, upon which I will thank you to direct the Auditor, or other proper officer of your company, to make reports for the periods of six months respectively, ending June 30, 1877, Decbr. 31, 1877, and June 30, 1878, by divisions as separated in your accounts, and by the same divisions monthly thereafter, commencing with July 31, 1878.

This information is desired specifically as requested if the method of keeping your accounts will so permit; if not, as near thereto as possible.

Very respectfully,

THEO'S FRENCH,

Auditor.

Charles Crocker, Esq.,

President Southern Pac. R. R. Co.,
San Francisco, Cal.

Department of the Interior,
Office of Auditor of Railroad Accounts,

Washington, D. C., Sept, 3, 1878.

SIR: I have the honor to inform you that today I have mailed to your address, 5 blanks, Sheet 1; 5 blanks, Sheet 2; and 20 blanks, Sheet 3; all of Form No. 3, issued by this office, and to request that report for June 30, 1878, be made upon these forms to this office at as early a day as possible; and hereafter, on the 30th of September, 31st of December, &c., quarterly, excepting that required on Sheet No. 3, which need only be made at such times as the transfer books of the company are closed prior to an election by or vote of stockholders, or prior to the payment of a dividend.

Very respectfully,

THEO'S FRENCH,

Auditor.

Chas. Crocker, Esq.,

Pres't Southern Pacific R. R. Co.,
San Francisco, Cal.

P. S. If at the end of a quarter, no change has occurred on Sheets 1 and 2 since the previous report, notification of that fact will be sufficient.

Department of the Interior,
Office of Auditor of Railroad Accounts,
Washington, D. C., Sept. 9, 1878.

Sir: Referring to my letter of the 27th ultimo, at which time blanks of Form No. 4 were forwarded, I will thank you to have the reports made on one-half of the sheets to show northward traffic, and on the other half to show southward traffic, if it is possible to so do.

Very respectfully,

THEO'S FRENCH,

Auditor.

Charles Crocker, Esq.,

Pres't Southern Pacific R. R. Co.,
San Francisco, Cal.

Department of the Interior,
Office of Auditor of Railroad Accounts,
Washington, D. C., Sept. 20th, 1878.

Sir: Forty blanks of each sheet, Nos. 1, 2, 3 and 4 of Form No. 5 of this office have been forwarded to you by this mail.

I have to request that report be made upon them for the periods following, viz.:

1st six months ending June 30, 1877.

2nd six months ending Dec. 31, 1877.

3d six months ending June 30, 1878, and a monthly report thereafter, commencing with that for July 31, 1878.

As in Form No. 2 of this office, it is requested that these reports be made by divisions as separated in

your accounts, and, in addition thereto, for each branch and leased road separately.

If the method of keeping your accounts will permit this information to be furnished specifically as requested, it is so desired, but if not, then as near thereto as possible.

Very respectfully,

THEOPHILUS FRENCH,

Auditor.

Charles Crocker, Esq.,

S. G.

President Southern Pacific R. R. Co.,
San Francisco, Cal.

Department of the Interior,
Office of Auditor of Railroad Accounts,

Washington, D. C., Sept. 27, 1878.

Sir: Ten blanks of Form No. 6, issued by this office, are herewith enclosed.

I have to request that reports on these blanks be forwarded to this office for the period following, viz:

1. For the six months ending June 30, 1877;
2. For the six months ending December 31, 1877;
3. For the six months ending June 30, 1878—and monthly thereafter, on July 31, August 31, and so forth.

Very respectfully,

THEOS. FRENCH,

Auditor.

Charles Crocker, Esq.,

Pre't Southern Pacific R. R. Co.

San Francisco, Cal.

Department of the Interior,
Office of Auditor of Railroad Accounts,
Washington, D. C., October 1, 1878.

Sir: Six blanks of Form No. 7, issued by this office, are herewith enclosed.

I have to request that reports be made upon this form for the periods following, viz:

1. For the six months ending June 30, 1877;
2. For the six months ending December 31, 1877;
3. For the six months ending June 30, 1878—and semi-annually thereafter, commencing with that for December 31, 1878.

In addition, I will thank you to report by items upon this form, the total cost of construction and equipment for your road to the 30th of June, 1878, as it appears on the books of the company.

Very respectfully,

THEOS. FRENCH,

Auditor.

Charles Crocker, Esq.,

Pres't Southern Pacific R. R. Co.,
San Francisco, Cal.

P. S. If possible, please give also the cost of construction of land-grant portion of road.

Department of the Interior,
Office of Auditor of Railroad Accounts,

Washington, D. C., October 4, 1878.

Sir: Five blanks each of sheets 1, 2, 3, & 4 of Form No. 8, issued by this office, have been forwarded to you by this mail.

I have to request that reports be made upon these blanks for the following periods, viz:

Six months ending June 30, 1877;

Six months ending December 31, 1877;

Six months ending June 30, 1878—and by periods of six months hereafter.

Very respectfully,

THEOS. FRENCH,

Auditor.

Charles Crocker, Esq.,

President Southern Pacific R. R. Co.,

San Francisco, California.

Department of the Interior,
Office of Auditor of Railroad Accounts,

Washington, D. C., October 7th, 1878.

Sir: Five blanks of Form No. 9, issued by this office, are herewith enclosed.

I have to request that reports be made upon these blanks for the following periods, viz:

Six months ending June 30, 1877;

Six months ending December 31, 1877;

Six months ending June 30, 1878—and by periods of six months hereafter, commencing with that for December 31, 1878.

Very respectfully,

THEOS. FRENCH,

Auditor.

Charles Crocker, Esq.,

President Southern Pacific Railroad Co.,

San Francisco, California.

Department of the Interior,
Office of Auditor of Railroad Accounts,
Washington, D. C., October 10th, 1878.

Sir: Five blanks of Form No. 10, issued by this office, have been forwarded to you by this mail.

I have to request that reports be made upon these blanks for the following periods, viz:

Six months ending June 30, 1887;

Six months ending December 31, 1877;

Six months ending June 30, 1878; and by periods of six months hereafter.

Very respectfully,

THEOS. FRENCH,

Charles Crocker, Esq.,

Auditor.

President Southern Pacific R. R. Co.,

San Francisco, California.

Department of the Interior,
Office of Auditor of Railroad Accounts,

Washington, D. C., Oct. 12th, 1878.

Sir: Five blanks of Form No. 11, issued by this office, have been forwarded to you by this mail.

I have to request that reports be made upon these blanks for the following periods, viz:

Six months ending June 30, 1877;

Six months ending December 31, 1877;

Six months ending June 30, 1878; and by periods of six months hereafter.

Very respectfully,

THEOS. FRENCH,

Charles Crocker, Esq.,

Auditor.

President Southern Pacific R. R. Co.,

San Francisco, Cal.

Department of the Interior,
Office of Auditor of Railroad Accounts,
Washington, D. C., October 15th, 1878.

Sir: Five blanks of Form No. 12, issued by this office, have been forwarded to you by this mail.

I have to request that reports be made upon these blanks for the following periods, viz:

Six months ending June 30, 1877;

Six months ending December 31, 1877;

Six months ending June 30, 1878—and by periods of six months hereafter.

Very respectfully,

THEOPHILUS FRENCH,

Auditor.

S. G.

Charles Crocker, Esq.,

President Southern Pacific R. R. Co.,

San Francisco, Cal.

Department of the Interior,
Office of Auditor of Railroad Accounts,

Washington, D. C., Octbr. 16th, 1878.

Sir: Five blanks of Form No. 13, issued by this office, are herewith enclosed.

I have to request that reports be made upon these blanks for the following periods, viz:

Six months ending June 30th, 1877;

Six months ending December 31st, 1877;

1398 SOUTHERN PACIFIC RAILROAD CO., ET AL.,

Six months ending June 30th, 1878—and by periods of six months hereafter.

Very respectfully,

THEOPHILUS FRENCH,
Auditor.

S. G.

Charles Crocker, Esq.,

President Southern Pacific R. R. Co.,
San Francisco, Cal.

Department of the Interior,

Office of Auditor of Railroad Accounts,

Washington, D. C., October 17th, 1878.

Sir: Please find herewith enclosed five blanks of Form No. 16, issued by this office.

I have to request that reports be made upon these blanks for the following periods, viz:

Six months ending June 30th, 1877;

Six months ending December 31st, 1877;

Six months ending June 30th, 1878—and by periods of six months thereafter.

Very respectfully,

THEOPHILUS FRENCH,
Auditor,
S. G.

Charles Crocker, Esq.,

President Southern Pacific R. R. Co.,
San Francisco, Cal.

Department of the Interior,
Office of Auditor of Railroad Accounts,
Washington, D. C., October 19th, 1878.

Sir: Five blanks each of sheets 1, 2 and 3, all of Form No. 17, issued by this office, have been forwarded to your address by this mail.

I have to request that reports be made upon these blanks for the following periods, viz:

Six months ending June 30, 1877;

Six months ending December 31, 1877;

Six months ending June 30, 1878—and by periods of six months hereafter.

Very respectfully,

THEOPHILUS FRENCH,

Auditor,

S. G.

Charles Crocker, Esq.,

President Southern Pacific R. R. Co.,
San Francisco, California.

Department of the Interior,
Office of Auditor of Railroad Accounts,
Washington, D. C., October 22nd, 1878.

Sir: Five blanks of Form No. 18, issued by this office, are herewith enclosed.

I have to request that reports be made upon these blanks for the following periods, viz:

Six months ending June 30, 1877;

Six months ending December 31, 1877;

1400 SOUTHERN PACIFIC RAILROAD CO., ET AL.,

Six months ending June 30, 1878—and by periods of six months hereafter.

Very respectfully,

THEOPHILUS FRENCH,

Auditor,

Charles Crocker, Esq.,

S. G.

President Southern Pacific R. R. Co.,

San Francisco, Cal.

Department of the Interior,

Office of Auditor of Railroad Accounts,

Washington, D. C., October 24th, 1878.

Sir: Five blanks of Form No. 19, issued by this office, are herewith enclosed.

I have to request that reports be made upon these blanks for the following periods, viz.:

Six months ending June 30, 1877;

Six months ending December 31, 1877;

Six months ending June 30, 1878—and by periods of six months thereafter.

six months thereafter.

Very respectfully,

THEOS. FRENCH,

Auditor.

Charles Crocker, Esq.,

President, Southern Pacific R. R. Co.,

San Franeiseo, Cal.

P. S.—If the method of keeping your accounts will permit this information to be furnished specifically as requested, it is so desired; if not, then as near thereto as possible.

Department of the Interior,
Office of Auditor of Railroad Accounts,
Washington, D. C., April 17th, 1879.

Sir: Herewith please find enclosed 25 blanks and 12 return envelopes, for monthly report of the earnings and expenses of your road from January, 1879, inclusive.

A change in the form of report for the year commencing July 1st, 1879, is now being considered, with a view to make it less troublesome, to simplify it, and if possible to reduce it to the minimum of information required.

The design in asking for these statements of earnings and expenses is, that the information furnished may be consolidated into a monthly official statement to be issued by this office.

For this reason, it is desirable that the blanks should be filled and forwarded to this office as soon as possible after the close of each month.

Very respectfully,

THEOS. FRENCH, Auditor.

S. G.

Charles Crocker, Esq.,

President Southern Pacific R. R. Co.,
San Francisco, Cal.

Department of the Interior,
Office of Auditor of Railroad Accounts,
Washington, D. C., May 17th, 1879.

Sir: Under the Act of Congress, approved June 19, 1878, requests have been made from time to time for

reports to be rendered by your company to this office, as follows, viz.:

- July 13, 1878, Compliance with Auditor's Act.
- July 13, 1878, Address of Officers and Directors.
- July 13, 1878, Business Address of Company.
- July 13, 1878, Information, Inspection of Books and right of way.
- July 13, 1878, Copies of Printed Reports.
- July 13, 1878, Freights, etc.; Schedules, Copies of
- July 13, 1878, Copies of Joint Tariffs.
- July 13, 1878, Special Contracts.
- July 29, 1878, By-Laws and List of Committees.
- July 24, 1878, Land Agent's Report.
- July 26, 1878, Contracts with Telegraph and Other Companies.
- July 22, 1878, Form 1, Financial Condition.
- August 1, 1878, Form 2, Revenue.
- Sept. 3, 1878, Form 3, Ownership and Control.
- August 27, 1878, Form 4, Statistical—Traffic.
- Sept. 20, 1878, Form 5, Operating and Other Expenses.
- Sept. 27, 1878, Form 6, Income Expenses.
- October 1, 1878, Form 7, Cost on Construction.
- October 4, 1878, Form 8, Statistical—Employes, Supplies, Repairs, Taxes, etc.
- October 7, 1878, Form 9, Statistical—Accidents.
- October 10, 1878, Form 10, Statistical—Funded Debt.
- October 12, 1878, Form 11, Statistical—Capital Stock.
- October 15, 1878, Form 12, Statistical—Roadway.
- October 16, 1878, Form 13, Statistical—Locomotives.

- Sept. 25, 1878, Form 14, Land Department, Statistical.
1879, }
Feby. 19, } Sept. 25, 1878, Form 15, Land Department, Financial.
Oct. 17, 1878, Form 16, Statistical—Bridges.
Oct. 19, 1878, Form 17, Statistical—Passenger, Freight & Miscellaneous Cars.
Oct. 22, 1878, Form 18, Statistical—Stocks & Bonds.
Oct. 24, 1878, Form 19, Freight carried.
April 17, 1879, Form 20, Earnings & Expenses—monthly.

If any compliance has been made with these requests, it has been only partial.

The Supreme Court of the United States, having decided that the so-called "Thurman Act" of May 7, 1878, is constitutional, there can be little question but that in the main the Act of June 19, 1878, creating an auditor of railroad accounts, and for other purposes, is also constitutional.

So far as this office is concerned, it is not desirable to have to enforce the penalties provided in case of neglect or refusal on the part of any company to make such reports as may be called for, and it is hoped that your company will comply with the requirements of the law in all respects, upon demand hereby now and again made, without necessitating an appeal to the Courts.

Very respectfully,

THEOPHILUS FRENCH,

Auditor.

Chas. Crocker, Esq.,

S. G.

President Southern Pacific R. R. Co.,
San Francisco, Cal.

Department of the Interior,
Office of Auditor of Railroad Accounts,
Washington, D. C., September 1, 1879.

Sir: Herewith I hand you two copies of blank form adopted by this office for half yearly reports.

This form takes the place of all forms hitherto issued from this office with the exceptions of Form No. 1 and form for "Statement of Earnings and Expenses" (sample copies enclosed) upon which reports will be required monthly as heretofore. To save the labor of copying by hand and to insure accuracy in the copies to be retained the new are printed in copying ink.

If the information cannot be given in full or the exact form prescribed, without considerable special expense, it should be given as complete and as nearly in accordance with the form as may be.

Hereafter your accounts should be so kept that you may be able to comply fully with the requirements.

The amount received as car service should be reported in full in earnings. The amount paid as "car service" should be reported in full in expenses.

I have to request that reports be made to this office by your road, as follows:

First: Half yearly reports on new form for each of the periods of six months ending December 31, 1878, and June 30, 1879; showing operations, etc., etc., of the land grant portion of your road.

Second: Half yearly reports, in any convenient form for each of the aforementioned periods of six months, showing operations, etc., of such portions of your road as have not received, and are not entitled

to receive, any lands of the United States by direct grant from Congress, or indirectly through any State; giving in each case the basis upon which business is pro-rated therewith.

Third: Abstracts of debit and credit footings, on Form No. 1, of your General Ledger at close of business before transfer of balances January 31, 1879, and for the last day of each subsequent month.

Fourth: Statement of earnings and expenses for the months January, 1879-78, and monthly thereafter.

I will thank you to cause the above described reports to be made at an early day.

Very respectfully,

THEOS. FRENCH,
Auditor.

Charles Crocker, Esq.,

S. G.

President Southern Pacific Railroad Co.
San Francisco, Cal.

— — —
(Stamped)

Rec'd at Secty's Office, Mar. 8, '80.

E. 174.

Department of the Interior,
Office of Auditor of Railroad Accounts,
Washington, D. C., February 28, 1880.

Sir: By this mail a blank form for semi-annual report has been forwarded to your address, and I have to request that report be made upon the same for the next six months, ending December 31, 1879.

Your attention is respectfully called to the following points, viz:

Pages 4 and 5—"Additions and Betterments, &c."—This is merely for six months—with the understanding that the total cost has been given in former reports.

Page 6—Give such information as may be possible from your accounts as kept.

Pages 7 and 7A—The order of detail is so arranged as to enable the classification "Conducting transportation."

"Motive Power" &c., to be obtained by footing the consecutive items.

Pages 11, 12, 13 and 13A—The information required by these blanks must, of course, be governed by your own record of statistics.

Pages 18 and 18A—These pages, it will be noted, refer to rolling stock owned, and rolling stock not owned, by which latter is meant such as has been rented, leased or purchased on installments.

Pages 19 to 20A—These pages, you will notice, refer to accidents, their classification, casualties and expenses. It is especially requested that this information be given as fully as possible.

While it is not desirable to put you to any extraordinary or unnecessary expense in this matter of making up reports, it is desirable to have the reports as complete as may be, and that they be rendered at as early a day as practicable.

Very respectfully,

THEOS. FRENCH, Auditor.

J. L. Willecutt, Esq.,

Sec'y Southern Pac. R. R. Co.

San Francisco, Cal.

(Stamped)

Secretary's Office, Mar. 25, 1880.

E. 275.

Department of the Interior,
Office of Auditor of Railroad Accounts,
Washington, D. C., March 18th, 1880.

Dear Sir: In reply of your letter of the 9th instant, I enclose as requested, one additional blank of Form 2, issued by this office.

Very respectfully,

THEOPH'S FRENCH,
Auditor.

J. L. Willcutt, Esq.,

N. D.

Sec'y Southern Pacific R. R. Co.

P. O. B. 2008,

San Francisco Cal.

(Marked)

Rec'd at Seery's Office, Mar. 27, '80.

Department of the Interior,
Office of Auditor of Railroad Accounts,
Washington, D. C., March 22d, 1880.

Dear Sir: I acknowledge receipt, with your letter of the 13th inst., of report on Form 1 of this office, and of statement of earnings and expenses for the month of January last, and forwarded herewith, as requested, 12 blanks of Form 1.

Very respectfully,

THEOS. FRENCH,

Geo. T. Folsom, Esq.,

Auditor.

Gen'l Accountant,

Southern Pacific R. R. Co.

San Francisco, Cal.

1408 SOUTHERN PACIFIC RAILROAD Co., ET AL.,

(Stamped)

Secretary's Office, May 17, 1880.

E 210.

Department of the Interior,
Office of Auditor of Railroad Accounts,
Washington, D. C., May 6, 1880.

Dear Sir: I have the honor to request that this office be furnished with a copy of your last annual printed report to stockholders.

Very respectfully,

THEO'S FRENCH,

Auditor.

J. L. Willcutt, Esq.,

Seey. Southern Pacific R. R. Co. of Cal.,
San Francisco, Cal.

(Stamped) —

Secretary's Office, Jul. 12, 1880.

E. 235.

Department of the Interior,
Office of Auditor of Railroad Accounts,
Washington, D. C., July 2d, 1880.

Dear Sir: I am in possession of the report of your company on Form 2, 8-002, of this office for the period ended Decbr. 31, 1879, and will be greatly obliged if you will forward this report for the half year ending June 30, 1880, so that it may be received on or before September 15th next.

Very respectfully,

THEO'S FRENCH,

J. L. Willcutt, Esq.,

Auditor.

Secretary Southern Pacific R. R. Co.,
San Francisco, Cal.

(Stamped)

Rec'd at Secty's Office,

Jul. 30, '80.

E 239.

Department of the Interior,
Office of Auditor of Railroad Accounts,

Washington, D. C., July 22d, 1880.

Sir:—In reply to your letter of the 14th instant, I desire to say that the report for the half year ending June 30, 1880, on Form 2 of this office, corresponds to the report—already received—for period ending December 31, 1879, on form 8-002; the same blank being classified in the department list as form 8-002 and in this office as Form 2. The desired two blanks are herewith enclosed.

Very respectfully,

THEO'S FRENCH,

Auditor.

J. L. Willcutt, Esq.,

N. P.

Sec'y South'rn Pacific R. R. Co.,

P. O. Box 2008, San Franciseo, Cal.

(Stamped)

Secretary's Office,

Sep. 15, 1880.

Department of the Interior,
Office of Auditor of Railroad Accounts,

Washington, D. C., September 7, 1880.

Dear Sir: Please furnish this office with certain information as indicated by the several headings following, to wit:

1. Amount of granted lands sold up to June 30, '80, and the consideration therefor?

1410 SOUTHERN PACIFIC RAILROAD CO., ET AL.,

2. How lands, and the proceeds of sales thereof are disposed of?
3. Amount and estimated value of lands granted remaining unsold, but earned or capable of being earned under the grant?
4. Number of miles constructed and equipped, and the actual cost thereof, in detail at time of completion?
5. Estimated number of miles to be constructed and cost of same?

Information in reference to the foregoing has been called for by the House Pacific R. Rd. Committee, and it is important to have the same at an early day.

Very respectfully,

THEO'S FRENCH,
Auditor,

J. L. Willcutt, Esq.,

F.

Sec. Southern Pac. R. R. Co.,

San Franciscisco, Cal.

Department of the Interior,
Office of Auditor of Railroad Accounts,
Washington, D. C., September 18, 1880.

Dear Sir: I beg to acknowledge the receipt of your letter of the 10th instant, with accompanying statements for month of July, 1880, on Forms 1 and 3 of this office, and as requested enclosed herewith, twelve (12) blanks from No. 3.

Very respectfully,

THEOS. FRENCH,
Auditor,

Geo. T. Folsom, Esq.,

E. W. R.

Genl. Acct. Southern Pacific R. R. Co.,

P. O. Box 2008, San Francisco, Cal.

(Stamped)

Rec'd at Sect'y Office,

Mar. 11, '81.

E 231.

Department of the Interior,
Office of Auditor of Railroad Accounts,

Washington, D. C., March 1, 1881.

Sir: By this mail two (2) blanks, form No. 8-002 of this office have been forwarded to your address, and I have to request reports thereon for periods of six months, ending December, 31, 1880, and June 30, 1881. Very respectfully,

THEO'S FRENCH,
Auditor.

Geo. T. Folsom, Esq., Gen'l Accountant,
Southern Pacific Railroad Co. of Cal.,
San Francisco, Cal.

(Stamped.)

Rec'd at Seey's Office,

Mar. 28, '81.

Department of the Interior,
Office of Commissioner of Railroads,

Washington, D. C., March 19, 1881.

Dear Sir: In compliance with your request of the 11th instant, I send you by to-day's mail, two (2) additional blanks—Form No. 8-002.

Very respectfully,

THEO'S FRENCH,

Geo. T. Folsom, Esq.,

Commissioner.

General Accountant,

Southern Pacific R. R. Co.,

San Francisco, Cal.

(Stamped)

Secretary's Office,

May 2, 1881,

Department of the Interior,

Railroad Office,

Washington, D. C., April 19th, 1881.

Dear Sir:—Your Abstract of Debit and Credit footings for February with statement of earnings and expenses for same month received.

Replies to request contained in your form accompanying same, I enclose you a supply of these blank forms. Very truly yours,

THEO'S FRENCH,

J. L. Willeutt, Esq.,

Commissioner.

Seey Southern Pac. R. R.,
San Francisco, Cal.

(Stamped.)

Secretary's Office, May 19, 1881.

Department of the Interior,

Railroad Office,

Washington, D. C., May 12, 1881.

Dear Sir: I have the honor to acknowledge the receipt of your letter of May 4, with inclosure for Southern Pacific Railroad.

Very respectfully,

THEOS. FRENCH, F. B. P.,

Commissioner.

J. L. Willeutt, Esq.,

Seey. Southern Pac. R. R. Co.,

San Francisco, Cal.

(In lead pencil.)

Ab. of Dr. & Cr. footings.

Statement E. & E.

(Stamped.)

Secretary's Office, May 19, 1881.

Department of the Interior,

Railroad Office,

Washington, D. C., May 12, 1881.

Dear Sir: I have the honor to acknowledge hereby the receipt of your communication of April 28, as also inclosure.

Very respectfully,

THEO'S FRENCH, F. B. P.

Commissioner.

J. L. Willcutt, Esq.,

Secretary Southern Pac. R. R. Co.

San Francisco, Cal.

(In lead pencil.)

Report for hf. year ending Dec. 31, '80.

(The batch of thirty-six letters embraced in the foregoing forty-one pages, dated respectively July 13th, 1878, July 22d, 1878, July 26, 1878, July 29, 1878, August 1, 1878, August 27, 1878, September 3, 1878, September 9, 1878, September 20, 1878, September 27, 1878, October 1, 1878, October 4, 1878, October 7, 1878, October 10, 1878, October 12, 1878, October 15, 1878, October 16, 1878, October 17, 1878, October 19, 1878, October 22, 1878, October 24, 1878, April 17, 1879, May 17, 1879, September 1, 1879, February 28, 1880, March 18, 1880, March 22, 1880, May 6, 1880, July 2, 1880, July 22, 1880, September 7, 1880, September 18, 1880, March 1, 1881, March 19, 1881, April 19, 1881, May 12,

1881, May 12, 1881, are marked by the Special Examiner, "Defendants' Exhibit before the Special Examiner, No. 70, Stephen Potter, Special Examiner.")

I hereby certify that I have compared the thirty-six letters embraced in the foregoing forty-one pages, and marked "Defendants' Exhibit before the Special Examiner, No. 70, Stephen Potter, Special Examiner," with the originals, and find them to be full, true and correct copies thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, September 30th, 1893.

[Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke,
Clerk.

Ld. Agt. R. R.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER.
No. 71.

Department of the Interior,
Washington, D. C., Oct., 2nd, 1868.

Sir: I have received your letter of the 1st instant, and in reply have to state, that the annual report of the Southern Pacific Railroad Company was received here on the 26th ultimo.

Very respectfully, your obt. servant,

W. T. OTTO,
Acting Secretary.

C. P. Huntington, Esq.,

Attorney S. P. R. R. Co.,
54 William St., New York.

(Marked "Defendants' Exhibit before the Special Examiner, No. 71, Stephen Potter, Special Examiner.")

CC

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,

Special Examiner.

San Francisco, Sept. 30th, 1893.

[Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke,
Clerk.

Ex. No. 71.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER.
No. 72.

(Stamped) W. M. F.

Secretary's Office, Nov. 9, 1881.

(81-06.)

Department of the Interior,
Office of Commissioner of Railroads,
Washington, D. C., November 2d, 1881.

Sir: Your favor of the 19th ultimo, containing stated enclosures of Semi-Annual Reports of your road for the six months ending June 30, 1881 (received through Mr. C. P. Huntington, A. & A., New York.) is received, for which please accept thanks.

Very respectfully,

Jos. K. McCAMMON,

Commissioner.

To J. L. Willecutt, Esq.,

Secretary Southern Pacific R. R. Co.,
San Francisco, California.

(1680-500.)

[Endorsed]: Jos. J. McCammon, Commr. Washington, Nov. 2, 1881. Acknowledging receipt of Semi-Ann'l Report. (Marked "Defendants' Exhibit before the Special Examiner, No. 72," Stephen Potter, Special Examiner.)

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, September 30, 1893.

[Endorsed]: Filed December 5, 1893. Wm. M. Van Dyke, Clerk.

Ex. No. 72.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER.
No. 73.

(Stamped) (8-106)
Secretary's Office, Feb. 8, 1882.

Department of the Interior,
Office of Commissioner of Railroads,
Washington, D. C., February 1st, 1882.

Sir: Your favor of the 24th ultimo, containing stated enclosures of Annual Report to Stockholders for 1880, is received, for which please accept thanks.

Very respectfully,
Jos. K. McCAMMON,
Commissioner,
per W. M. F.

To J. L. Willeutt, Esq.,
Secretary Southern Pacific R. R. Co.,
San Francisco, Cal.
(1680-500)

[Endorsed on back]: Jos. K. McCammon, Washington, Feb. 1-82, acknowledging rec't of copies of our reports to stockholders. (Marked, "Defendants' Exhibit before the Special Examiner, No. 73, Stephen Potter, Special Examiner.")

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, September 30, 1893.

[Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Ex. No. 73.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER.

No. 74.

(Stamped) (8-106)

Secretary's Office.

Received May 27, 1882.

Answered.....

Respectfully referred to

Department of the Interior,
Office of Commissioner of Railroads,

Washington, D. C., May 20, 1882.

Sir: Your favor of the 5th instant containing stated enclosures of report for half year ending De-

cember 31, 1881, is received, for which please accept thanks.

Very respectfully,

W. H. ARMSTRONG, Commissioner.

Pr. K. S.

To J. L. Willeutt, Esq.,
Sec'y So. Pac. R. R. Co.,
San Francisco, Cal.
(1680-500)

[Endorsed on back]: W. H. Armstrong, Com'r.
Washington, May 20, 1882. Acknowledging receipt of
Report. (Marked "Defendants' Exhibit before the
Special Examiner, No. 74, Stephen Potter, Special Ex-
aminer.")

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, Sept. 30, 1893.

[Endorsed]: Filed Dec. 5, 1893. Wm. M. Van
Dyke, Clerk.

Ex. No. 74.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER.

No. 75.

(Stamped.) (8-106.)

Secretary's Office.

Received Nov. 17, 1882.

Answered.....

Department of the Interior,
Office of Commissioner of Railroads,
Washington, D. C., November 9, 1882.

Sir: Your favor of the 28th ultimo, containing stated enclosure of report of the Southern Pacific R. R. Co. for the half year ending June 30, 1882, is received, for which please accept thanks.

Very respectfully,

Wm. H. ARMSTRONG,

Commissioner.

To J. L. Willeutt, Esq.

F. B. P.

See'y Southern Pac. R. R. Co.,

San Francisco, Cal.

(1680-500.)

[Endorsed on back]: W. H. Armstrong, Washington, Nov. 9, 1882. Aek'g. rec't of report for $\frac{1}{2}$ year endg. June 30, '82.

(Marked "Defendants' Exhibit before the Special Examiner, No. 75, Stephen Potter, Special Examiner.")

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,

Special Examiner.

Ex. No. 75.

San Francisco, September 30th, 1893.

[Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER.

No. 76.

(Stamped) (8-106)
Secretary's Office.

Received Aug. 21, 1883.
Answered.....

Department of the Interior,
Office of Commissioner of Railroads,

Washington, D. C., Aug. 11, 1883.

Sir: Your favor of the 30th ulto., containing stated enclosure of report for half year ending Dec. 31, 1882, on our form 8-002 is received, for which please accept thanks. Very respectfully,

W. H. ARMSTRONG,
Commissioner.
T. J. Walker.

To J. L. Willeutt, Esq.,
Secretary S. Pac. R. R. Co.,
San Francisco, Cal.

(1680-500)

(Marked "Defendants' Exhibit before the Special Examiner, No. 76, Stephen Potter, Special Examiner.")

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, September 30th, 1893.

[Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Ex. No. 76.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER.

No. 77.

(Stamped.)

Secretary's Office.

Received Apr. 11, 1884.

Answered.....

Department of the Interior,
Office of Commissioner of Railroads,
Washington, April 3, 1884.

J. L. Willcutt, Esq.

Sec'y Southern Pacific R. R. Co.,

San Francisco, Cal.

Sir: After careful consideration I have concluded that your company may render an annual report on our Form 8-002, in lieu of the half-yearly reports heretofore required. Such annual report should be made for the fiscal year ending June 30 in each year, and should reach this office not later than September 1. This change is made to promote the convenience of your office, and upon your assurance that the report will be furnished by the time indicated, the semi-annual report will be dispensed with, reserving, however, the right to require it as heretofore, if it should appear necessary.

The monthly reports of earnings and expenses will be required as formerly.

Very respectfully,

F. B. PICKERILL,
For the Commissioner.

(Marked "Defendants' Exhibit before the Special Examiner, No. 77, Stephen Potter, Special Examiner.")

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, September 30th, 1893.

[Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Ex. No. 77.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER.
No. 78.

(Stamped)

Secretary's Office,
Received Sept. 12, 1884.

Answered.....

Department of the Interior,
Office of Commissioner of Railroads,

Washington, Sept. 6, 1884.

J. L. Willeutt, Esq.,

Seecty Southern Pac. R. R. Co.

San Francisco, Cal.

Dear Sir: I have the honor to acknowledge receipt of your letter of the 23 ulto., also, by express, your report for 1884 on our Form 8-008.

Very respectfully,

THOS. J. WALKER,

In charge of office in the Commr's absence.

(Marked "Defendant's Exhibit before the Special Examiner, No. 78, Stephen Potter, Special Examiner.")

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, September 30, 1893.

[Endorsed:] Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Ex. No. 78.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER,
No. 79.

(Stamped)

Secretary's Office,
Received Feb. 18, 1885.

Answered.....

Department of the Interior,
Office of Commissioner of Railroads,
Washington, February, 10, 1885.

J. L. Willeutt, Esq., Secretary,
Southern Pacific R. R. Co.,
San Francisco, California.

My Dear Sir: Many thanks for your prompt and kind compliance in sending 2 full sets repts.

Very truly yours, &c.,
F. B. PICKERILL.

(Marked "Defendants' Exhibit before the Special Examiner, No. 79, Stephen Potter, Special Examiner.")

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, September 30th, 1893.

[Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke,
Clerk.

Ex. No. 79.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER,
No. 80.

F. B. P.
(Stamped)

Secretary's Office,
Received June 1, 1885.

Answered

Department of the Interior,
Office of Commissioner of Railroads,
Washington, May 22, 1885.

J. L. Willcutt, Esq.,
Secretary Southern Pacific R. R. Co.,
San Francisco, Cal.

Dear Sir: I have received the letter of the 14th instant, in which you inform me that "by reason of the lease of the Southern Pacific Railroad of California to the Southern Pacific Company, the operations of this road will hereafter be included in the statements of that Company."

I beg leave to suggest that the obligations of the Southern Pacific Railroad of California to the United

States Government are in no manner affected by the lease to which you refer, and consequently, the statements of the operations of that Company are as necessary now and will be hereafter, as they have been hitherto. Therefore, I respectfully request that you will continue to furnish them.

Most respectfully yours,

J. E. JOHNSTON,

Commissioner.

(Marked, "Defendants' Exhibit before the Special Examiner, No. 80. Stephen Potter, Special Examiner.")

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,

Special Examiner.

San Francisco, September 30, 1893.

[Endorsed:] Filed Dec. 5, 1893. Wm. M. Van Dyke,
Clerk.

Ex. No. 80.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER
No. 81.

Department of the Interior,
Office of Commissioner of Railroads,
Washington, December 21, 1885.

Charles Crocker, Esq.,
President Southern Pacific R. R. Co.,
San Francisco, Cal.

Sir: I respectfully inclose herewith rules established by the Secretary of the Interior on the subject of the

reports and accounts to be furnished to this office, and blank forms of those accounts.

Your obedient servant,

J. E. JOHNSTON,
Commissioner.

(In lead pencil)

Rec'd 1 copy Form 8-008 A.

" 1 " " 8-002 B.

Also copies Cir. Letter of Nov. 27, '85.

(Copy of inclosure.)

System of Reports.

Department of the Interior,

Office of the Commissioner of Railroads,

Washington, D. C., November 27, 1885.

By virtue of the authority vested in the Commissioner of Railroads by the third section of the Act of June 19th, 1878, by and under the direction, and with the approval of the Secretary of the Interior, I do hereby prescribe the following system of sworn "reports to be rendered" to me by "the railroad companies whose roads are in whole or in part west, north, or south of the Missouri river, and to which the United States have granted any loan of credit or subsidy in bonds or lands," which system is to take effect on and after the 31st day of December, 1885.

1. Annual report to be returned to the Commissioner of Railroads, to be made on or before the 1st day of February of each year, and to include business to the 31st of December in the year next preceding, in accordance with form hereto annexed marked "A."

2. Semi-annual report, embracing the whole earnings of each road and the whole earnings of each branch, the net earnings of each road and the net earnings of each branch. The items of charge which make the difference between the gross earnings of each road and its net earnings and of each branch and its net earnings, specifically showing the items composing such difference, and, in other respects, according to the form hereto annexed marked "B."
3. A monthly report, between the first and fifteenth of each month, showing the gross and net earnings of each road during the last preceding month.
4. Where a portion of any road is subsidized and a portion not subsidized, a separate account and report of the *actual* gross and net earnings of the subsidized portion of the road, and the actual gross and net earnings of the nonsubsidized part, according to rules 1, 2, and 3, and forms "A" and "B."
5. A report, at least ten days in advance of each meeting of the stockholders—specifying distinctly what business is to be done or submitted for action at such meeting.
6. A report to be made at least ten days before each meeting of the Directors, with a full and specific statement of all business to be submitted to such board.
7. A report to be made at least three days in advance of each meeting of the Executive Committee of the Board of Directors, with a full statement of all business to be submitted to such committee.

8. A report of the minutes of each meeting of the stockholders within ten days after the adjournment of such meeting.

9. A full report of the minutes of each meeting of the Board of Directors, to be returned within ten days after the adjournment of such meeting, including names of Directors present and how each voted.

10. A full report of the minutes of each meeting of the Executive Committee, to be submitted within ten days after adjournment, including the names of Directors present and how each voted.

11. A quarterly report of the rates charged during each quarter, within fifteen days after the close of the quarter, for passengers and traffic on each road and each of its branches, both as to through and local traffic on each, and the portion of road or roads to which such rate or rates applied.

12. A distinct and full report of all special rates, if any, to whom allowed, also all, if any, rebates or drawbacks and to whom, and the aggregate amount of each, to be returned within fifteen days after the close of each quarter.

13. All contracts made with any other railroad or transportation company or companies within ten days after such contract is made, with a copy of the contract, if in writing, with a full statement thereof if in parole.

J. E. JOHNSTON,

Commissioner of Railroads.

Approved: L. Q. C. LAMAR, Secretary.
(4784-500).

(Marked "Defendants' Exhibit before the Special Examiner, No. 81, Stephen Potter, Special Examiner".)

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, September 30, 1893.

[Endorsed]: Filed Dec. 5, 1893, Wm. M. Van Dyke,
Clerk.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER.
No. 82.

(Stamped.) (8—106)

Secretary's Office,
Received Sep. 6, 1886.
Answered—file
Respectfully referred to.....

Department of the Interior,
Office of Commissioner of Railroads,

Washington, D. C., Aug. 30, 1886.

J. L. Willeutt, Esq., Secretary,
Southern Pacific R. R. Co.,
San Francisco, Cal.

Sir: Your favor of the 18th instant, containing enclosures, as stated below, has been received, for which you will please accept my thanks.

Very respectfully, in absence of the Commissioner,
EDWARD HERRICK, in charge.

Report Form "B" for six months ending June 30, 1886.

(15006-500)

(Marked Defendants' Exhibit before the Special Examiner, No. 82, Stephen Potter, Special Examiner.)

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, September 30th, 1893.

[Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke,
Clerk.

Ex. No. 82.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER.
No. 83.

(Stamped) (8-106)

Secretary's Office.

Received May 13, 1887.

Answered.....file.

Respectfully referred to.

Department of the Interior,
Office of Commissioner of Railroads,

Washington, D. C., May 7, 1887.

Sir: Your favor of the 29th ultimo, containing stated enclosures of reports, Forms "A" & "B," for

December 31, 1886, is received, for which please accept thanks.

Very respectfully,

EDWARD HERRICK,
for the Commissioner.

To J. L. Willeutt, Esq.,

Secretary Southern Pacific R. R. Co.
(7747-500) San Francisco, Cal.

(Marked "Defendants' Exhibit before the Special Examiner, No. 83, Stephen Potter, Special Examiner.")

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, Sept. 30th, 1893.

[Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Ex. No. 83.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER.

No. 84.

(Stamped) (8-007.)
Secretary's Office.

Received May 16, 1887.

Answered—Received Aekn'd on blank form.
Respectfully referred to

Department of the Interior,
Office of Commissioner of Railroads,
Washington, May 7, 1887.

J. L. Willecutt, Esq.,
Secretary Southern Pacific R. R. Co.
San Francisco.

Dear Sir: Inclosed please find supply of our blank forms, as follows:

- Form 8-001. General Ledger Footings.
..... " 8-002. Semi-annual Reports.
..... " 8-003. Monthly Earnings and Expenses.
-
-

for use in reporting to this office.

You are respectfully requested to give timely notice before the supply is exhausted, in order that you may at all times have a sufficient quantity on which to make prompt returns.

Please acknowledge receipt on attached form.

Very respectfully,

EDWARD HERRICK,
for the Commissioner.

(9-22-'83-300.)

Ex. No. 84.

(Marked "Defendants' Exhibit before the Special Examiner, No. 84. Stephen Potter, Special Examiner.")

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, Sept. 30th, 1893.

[Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER.

No. 85.

(Stamped.)

Received, Sep. 23, 188

Answered.....

Respectfully referred to

(8-106)

Department of the Interior,
Office of Commissioner of Railroads,

Washington, D. C., September 17, 1887.

Sir: Your favor of the 5th instant containing stated enclosures of report, Form "B," for June 30, 1887, is received, for which please accept thanks.

Very respectfully,

EDWARD HERRICK,
for the Commissioner.

To J. H. Willeutt, Esq.,

Secretary Southern Pacific R. R. Co.
San Francisco.

(7747-500)

(Marked "Defendants' Exhibit before the Special Examiner, No. 85, Stephen Potter, Special Examiner.")

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, Sept. 30th, 1893.

Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Ex. No. 85.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER.

No. 86.

(Stamped.)

Secretary's Office,

Received April 9, 1888.

Answered—file.

Respectfully referred to
(8-106.)

Department of the Interior,
Office of Commissioner of Railroads,
Washington, D. C., April 2, 1888.

Sir: Your favor of the 22nd ultimo contained stated enclosures of reports "A" & "B," for December 31, 1887, is received, for which please accept thanks.

Very respectfully,

EDWARD HERRICK,
for the Commissioner.

To J. H. Willcutt, Esq.

Secretary Southern Pacific R. R. Co.

(7747-500.) San Francisco.

(Marked "Defendants' Exhibit before the Special Examiner, No. 86, Stephen Potter, Special Examiner.")

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, Sept. 30th, 1893.

[Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Ex. No. 86.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER.
No. 87.

(Stamped.)

Received June 11, 1889.

Answered—file.

Respectfully referred to

(8-106)

Department of the Interior,
Office of Commissioner of Railroads,

Washington, D. C., June 4, 1889.

Sir: Your favor of the 22nd ultimo containing stated enclosures of report on Form 8-008 "A" for the year ending December 31, 1888, is received, for which please accept thanks.

Very respectfully,

EDWARD HERRICK,
Commissioner in Charge.

To J. L. Willeutt, Esq.,

Secty. Southern Pacific R. R. Co.

San Francisco, Cal.

(16032 b-500)

(Marked Defendants' Exhibit before the Special Examiner, No. 87, Stephen Potter, Special Examiner.)

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, Sept. 30th, 1893.

[Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Ex. No. 87.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER.

No. 88.

State of California—Department of State.

I, E. G. Waite, Secretary of State of the State of California, do hereby certify that I have compared the annexed Articles of Association, Amalgamation and Consolidation of Southern Pacific Railroad Co., and Los Angeles & San Pedro Railroad Co., with the original now on file in my office, and that the same is a correct transcript therefrom, and of the whole thereof. Also, that this authentication is in due form and by the proper officer.

Witness my hand and the great seal of State, at
office in Sacramento, California, the third day of Sep-
tember, A. D. 1892.

(The Great Seal of the State of California) (Signed) E. G. WAITE,
Secretary of State.
By Wm. H. Stevens, Deputy.

ARTICLES OF ASSOCIATION, AMALGAMATION AND CONSOLIDATION.

Made and executed this 17th day of December, A. D. 1874, by and between the Southern Pacific Railroad Company, of the first part, and the Los Angeles and San Pedro Railroad Company, party of the second part, WITNESSETH:

THAT, WHEREAS, the said party of the first part heretofore, to-wit, on the 19th day of August, A. D. 1873, was duly incorporated and organized under the law of the State of California, by the amalgama-

tion and consolidation of the following railroad corporations theretofore existing under laws of said State, to-wit: The San Francisco and San Jose Railroad Company, the Santa Clara and Pajaro Railroad Company, the Southern Pacific Railroad Company, the California Southern Railroad Company, and the Southern Pacific Branch Railroad Company, all of said railroad companies being incorporated and duly organized under the laws of the State of California prior to the 31st day of December, A. D. 1872, pursuant to the articles of amalgamation and consolidation of that day by them agreed upon, which by virtue of the law of said State, entitled "An Act to provide for the incorporation of railroad companies and the management of the affairs thereof, and other matters relating thereto," approved May 20th, 1861, whereby said corporation became duly incorporated and organized under the laws of said State, for the purpose of purchasing, constructing, owning, maintaining and operating continuous lines of railroad from the City and County of San Francisco, in the State of California, through the City and County of San Francisco, the counties of San Mateo, Santa Clara, Monterey, Fresno, Tulare, Kern, San Bernardino and San Diego, to some point on the Colorado River, in the southeastern part of the State of California, a distance of six hundred and thirty-five and 87-100 miles, as near as may be; also, a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad, at or near the Colorado River, a distance of three hundred and fifty-six and 87-100 miles, as near as may be; also, a line of railroad from the

town of Gilroy, in the County of Santa Clara, in said State, passing through said county and the counties of Santa Cruz and Monterey, to a point at or near Salinas city, in said last named county, a distance of thirty-five and 1-10 miles, as near as may be; and also such branches to said lines as the Board of Directors of said corporation may consider advantageous to said corporation and direct to be established; and also from a point on said road aforesaid, at or near Salinas city, in the county of Monterey, southerly to a point in Kern county, south of Tulare Lake, intersecting the San Joaquin Division of the said Southern Pacific Railroad; also, from a point on the above described line, at or near San Miguel, in San Luis Obispo county, thence in a southerly direction to a point of intersection, in Los Angeles county, with the line of the said Southern Pacific Railroad, running from Tehachapi Pass, by way of Los Angeles, to Fort Yuma; said roads passing into or through the counties of Monterey, San Luis Obispo, Kern, Santa Barbara and Los Angeles, and said roads, in the aggregate being as near as may be, four hundred and two (402) miles in length.

AND WHEREAS, the said party of the second part was heretofore, to-wit: on the 18th day of February, A. D. 1868, duly incorporated and organized under the laws of the State of California, for the purpose of constructing, owning, and maintaining and operating a railroad, from a point in the city of Los Angeles, in the county of Los Angeles, State of California, to a point on or near the Bay of San Pedro, in said county, a distance of twenty and 5-10 miles.

AND WHEREAS, said parties believe a consolidation and amalgamation of their capital stock, debts, prop-

erties, assets, roads, telegraphs, lands and franchises will be mutually advantageous.

AND WHEREAS, more than three-fourths in value of the stockholders in interest of each of said parties have consented, in writing, to such amalgamation and consolidation, upon the terms and conditions hereinafter set forth.

AND WHEREAS, all of the railroad corporations included in the several consolidations were duly incorporated prior to the 31st day of December, A. D. 1872.

Now, THEREFORE, under and by virtue of the fortieth section of a law of the State of California, entitled "An Act to provide for the incorporation of railroad companies, and the management of the affairs thereof, and other matters relating thereto," approved May 20th, 1861, and the several amendments thereto, the said parties do hereby mutually covenant and agree, each with the other, to the following articles, to-wit:

ARTICLE FIRST.

Said parties do hereby amalgamate and consolidate themselves into a new corporation, under the name and style of the Southern Pacific Railroad Company, which new corporation shall continue in existence for the period of fifty years from the date of these articles; and they do further consolidate and amalgamate their several capital stocks, debts, properties, assets, roads, telegraphs, lands, franchises, rights, titles, privileges, claims and demands of every kind whatsoever, as well in possession as in expectancy, at law or in equity, and do grant, convey and vest the same in the said new corporation, as fully as the same are now sev-

erally held and enjoyed by them respectively, subject, however, to all conditions, obligations, stipulations, contracts, agreements, liens, mortgages, incumbrances, judgments, claims and charges thereon, or in anywise affecting the same or any part thereof.

ARTICLE SECOND.

The object and purpose of said new corporation shall be to purchase, construct, own, maintain and operate the several lines of railroads hereinbefore described, to-wit: Continuous lines of railroad from the City and County of San Francisco, in the State of California, through the City and County of San Francisco, the Counties of San Mateo, Santa Clara, Monterey, Fresno, Tulare, Kern, San Bernardino and San Diego, to some point on the Colorado River in the southeastern part of the State of California, a distance of six hundred and thirty-five and 87-100 miles, as near as may be; also, a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad, at or near the Colorado River, a distance of three hundred and fifty-six and 7-10 miles, as near as may be; also, a line of railroad from the town of Gilroy, in the City and County of Santa Clara, in said State, passing through said county and the counties of Santa Cruz and Monterey, to a point at or near Salinas City in said last-named county, a distance of thirty-five 1-10 miles, as near as may be; and, also, such branches to said lines as the Board of Directors of said corporation may consider advantageous to said corporation, and direct to be established. And, also, from a point on said

road aforesaid, at or near Salinas City, in the County of Monterey, southerly to a point in Kern County, south of Tulare Lake, intersecting the San Joaquin division of the said Southern Pacific Railroad; also from a point on the above described line at or near San Miguel, in San Luis Obispo county, thence in a southerly direction to a point of intersection in Los Angeles county with the line of the said Southern Pacific Railroad, running from Tehachapi Pass by way of Los Angeles to Fort Yuma, said roads passing through the Counties of Monterey, San Luis Obispo, Kern, Santa Barbara and Los Angeles, and said roads in the aggregate being, as near as may be, four hundred and two miles in length; also, from a point in the City of Los Angeles, in the County of Los Angeles, State of California, to a point on or near the Bay of San Pedro, in said county, a distance of twenty and one-half miles, the aggregate length of all of said railroads being one thousand four hundred and forty-nine and fifty-four-one-hundredths miles.

ARTICLE THIRD.

The Board of Directors of said new corporation shall consist of seven persons, and the following named persons shall act as such directors until their successors shall have been duly elected, pursuant to the by-laws of said new corporation hereafter to be adopted, viz: Charles Crocker, David D. Colton, E. H. Miller, Jr., Robert Robinson, Nicholas T. Smith, Stephen T. Gage and Joseph L. Willeutt.

ARTICLE FOURTH.

The capital stock of said new corporation shall be ninety million dollars, divided into nine hundred

thousand shares of one hundred dollars each, that sum being the contemplated actual cost of said railroads, including telegraph lines, rolling stock, motive power, shops, depots, etc.

ARTICLE FIFTH.

Each stockholder of each of said parties shall have the same number of shares of the capital stock of the new corporation which he now owns and holds of the capital stock of his respective company, upon the same terms and conditions, and shall be entitled to receive from said new corporation certificates therefor where the same has been fully paid up, upon the surrender of the certificates now held by him; and where the same has not been fully paid up, he shall receive such other evidence of his ownership as the Board of Directors of said new corporation shall direct, upon the surrender of such evidence of his ownership of such unpaid stock as he may now hold.

ARTICLE SIXTH.

And the said several parties of the first and second parts, each for himself, hereby sells, assigns, transfers, grants, bargains, releases and conveys to the said new and consolidated company and corporation, its successors and assigns, forever, all its property, real, personal and mixed, of every kind and description, all its capital stock, all its interest in the shares of its capital stock, subscribed but not fully paid up, all credits, effects, judgments, decrees, contracts, agreements, claims, dues and demands of every kind and description, and all rights, privileges and franchises, corporate and otherwise, held, owned or claimed by said parties of the first and second parts, or either of

them, in possession or expectancy, either at law or in equity, subject however, to all conditions, obligations, stipulations, contracts, agreements, liens, mortgages, incumbrances, claims and charges thereon, or in anywise affecting the same.

ARTICLE SEVENTH.

The said new and consolidated company and corporation is to be liable for, and shall fulfil, perform, do and pay all and each of the contracts and agreements, covenants, duties, obligations, liabilities, debts, dues and demands of the said several parties of the first and second parts. But this amalgamation and consolidation shall not, in any way, relieve the said parties of the first and second parts, or the stockholders thereof, from any and all just liabilities.

IN TESTIMONY WHEREOF, the said party of the first part has caused this instrument to be signed by its President and Secretary, and its corporate seal hereunto affixed, and the said party of the second part has caused this instrument to be signed by its President and Secretary, and its corporate seal hereunto affixed in pursuance of orders and resolutions of their several Boards of Directors made on the seventeenth day of December, A. D. 1874.

SOUTHERN PACIFIC RAILROAD COMPANY,

(Seal) By Chas. Crocker, President.

S. P. J. L. Willcutt, Secretary.

R. R. Co.)

LOS ANGELES AND SAN PEDRO RAILROAD COMPANY.

(Seal L. A. By Leland Stanford, President.

& S. P. J. L. WILLCUTT,

R. R. Co.) Secretary.

We, the undersigned, being the holders of stock to the extent of more than three-fourths of the value of all stockholders in interest of the said Southern Pacific Railroad Company, party of the first part, to the foregoing new articles of association, amalgamating and consolidating the said parties of the first and second parts, hereby consent to such amalgamation and consolidation, and to the said new articles of association, this seventeenth day of December, A. D. 1874.

CHAS. CROCKER,

S. T. GAGE,

N. T. SMITH,

DAVID D. COLTON,

E. H. MILLER, JR.,

J. L. WILLCUTT,

ROBERT ROBINSON,

MARK HOPKINS,

LELAND STANFORD,

C. P. HUNTINGTON,

By Mark Hopkins, Att'y-in-fact.

CONTRACT AND FINANCE CO.,

By Jno. Miller, Sec'y.

We, the undersigned, being the holders of stock to the extent of more than three-fourths of the value of all stockholders in interest of the said Los Angeles and San Pedro Railroad Company, party of the second part, to the foregoing new articles of association, amalgamating and consolidating the said parties of the first and second parts, hereby consent to such amalgamation and consolidation, and to the said new articles of

association, this seventeenth day of December, A. D.
1874.

LELAND STANFORD,

CHAS. CROCKER,

DAVID D. COLTON,

MARK HOPKINS,

C. P. HUNTINGTON,

By Mark Hopkins, Att'y in fact.

ROBERT ROBINSON,

J. L. WILLCUTT,

CONTRACT AND FINANCE CO.,

By Jno. Miller, Sec'y.

[Endorsed]: Articles of Association, Amalgamation and Consolidation of the Southern R. R. Co. and the Los Angeles and San Pedro R. R. Co. Filed in the office of the Secretary of State, Dec. 18th, 1874. Recorded Book 9, page 354. Drury Melone, Sec'y of State. By N. E. White, Deputy.

(Marked "Defendants' Exhibit before the Special Examiner, No. 88, Stephen Potter, Special Examiner.")

I hereby certify that I have compared the foregoing document with the original exhibit, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,

Special Examiner.

San Francisco, October 14, 1893.

[Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Southern Pacific R. R. Co. Articles of Association, Amalgamation and Consolidation of the Southern

Pacific Railroad Co. and the Los Angeles and San Pedro R. R. Co. Dated Dec. 17, 1874. Filed in office of Secretary of State, Dec. 18, 1874.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER.
No. 89.

State of California, Department of State.

I, W. C. Hendricks, Secretary of State of the State of California, do hereby certify that I have carefully compared the annexed copy of Articles of Association, Incorporation, Amalgamation and Consolidation of the Southern Pacific Railroad Company, with seventeen other railroad companies, with the certified copy of the original now on file in my office, and that the same is a correct transcript therefrom, and of the whole thereof. Also, that this authentication is in due form and by the proper officer.

Witness my hand and the Great Seal of State, at office in Sacramento, California, the sixth day of June, A. D. 1888.

(Signed) W. C. HENDRICKS,

By H. B. Davidson,

S. P.

Deputy.

ARTICLES OF ASSOCIATION, INCORPORATION, AMALGAMATION AND CONSOLIDATION

of the Southern Pacific Railroad Company, the San Jose and Almaden Railroad Company, the Pajaro and Santa Cruz Railroad Company, the Monterey Railroad Company, the Monterey Extension Railroad Com-

pany, the Southern Pacific Branch Railway Company, the San Pablo and Tulare Railroad Company, the San Pablo and Tulare Extension Railroad Company, the San Ramon Valley Railroad Campany, the Stockton and Copperopolis Railroad Company, the Stockton and Tulare Railroad Company, the San Joaquin Valley and Yosemite Railroad Company, the Los Angeles and San Diego Railroad Company, the Los Angeles and Independence Railroad Company, the Long Beach, Whittier and Los Angeles County Railroad Company, the Long Beach Railroad Company, the Southern Pacific Railroad Extension Company, and the Ramona and San Bernardino Railroad Company.

ARTICLES OF ASSOCIATION, INCORPORATION, AMALGAMATION AND CONSOLIDATION

Made and executed on the fourth (4th) day of May, 1888, by and between the Southern Pacific Railroad Company, party of the first part; the San Jose and Almaden Railroad Company, party of the second part; the Pajaro and Santa Cruz Railroad Company, party of the third part; the Monterey Railroad Company, party of the fourth part; the Monterey Extension Railroad Company, party of the fifth part; the Southern Pacific Branch Railway Company, party of the sixth part; the San Pablo and Tulare Railroad Company, party of the seventh part; the San Pablo and Tulare Extension Railroad Company, party of the eighth part; the San Ramon Valley Railroad Company, party of the ninth part; the Stockton and Copperopolis Railroad Company, party of the tenth part; the Stockton

and Tulare Railroad Company, party of the eleventh part; the San Joaquin Valley and Yosemite Railroad Company, party of the twelfth part; the Los Angeles and San Diego Railroad Company, party of the thirteenth part; the Los Angeles and Independence Railroad Company, party of the fourteenth part; the Long Beach, Whittier and Los Angeles County Railroad Company, party of the fifteenth part; the Long Beach Railroad Company, party of the sixteenth part; the Southern Pacific Railroad Extension Company, party of the seventeenth part; and the Ramona and San Bernardino Railroad Company, party of the eighteenth part;

WITNESSETH: That, whereas, the party of the first part, the Southern Pacific Railroad Company, is the owner of a line of railroad and franchises commencing in the City and County of San Francisco, in the State of California, and running thence through the City and County of San Francisco, the Counties of San Mateo, Santa Clara, Monterey, Fresno, Tulare, Kern, San Bernardino and San Diego, to some point on the Colorado River, in the southeastern part of the State of California, a distance of six hundred and thirty-five and eighty-seven one-hundredths miles, as near as may be; also, a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas and Pacific Railroad, at or near the Colorado River, a distance of three hundred and fifty-six and seven-tenths miles, as near as may be; also, a line of railroad from the town of Gilroy, in the County of Santa Clara, in said State, passing through said county and the Counties of Santa Cruz and Monterey, to a point

at or near Salinas City, in said last-named county, a distance of thirty-five and one-tenth miles, as near as may be; and, also, such branches to said lines as the Board of Directors of said corporation may consider advantageous to said corporation, and direct to be established; and also, from a point on said road aforesaid at or near Salinas City, in the County of Monterey, southerly to a point in Kern County, south of Tulare Lake, intersecting the San Joaquin division of said Southern Pacific Railroad; also, from the above described line at or near San Miguel, in San Luis Obispo County, thence in a southerly direction to a point of intersection, in Los Angeles County, with the line of the said Southern Pacific Railroad, running from Tehachapi Pass, by way of Los Angeles, to Fort Yuma; said roads passing into or through the counties of Monterey, San Luis Obispo, Kern, Santa Barbara and Los Angeles, and said roads, in the aggregate, being, as near as may be, four hundred and two miles in length; also, from a point in the City of Los Angeles to a point on or near the Bay of San Pedro, in said county, a distance of twenty-four and sixty-five one-hundredths (24.65) miles; the aggregate length of all of said railroads being one thousand four hundred and fifty-four and thirty-two one-hundredths miles.

AND WHEREAS, The party of the second part, the San Jose & Almaden Railroad Company, is the owner of a line of railroad commencing at or near Hillsdale, on the line of the Southern Pacific Railroad, and running thence southerly and southeasterly to a point at or near the town of New Almaden, all in the County of Santa Clara, a distance of 7.8 miles, more or less.

AND WHEREAS, The party of the third part, the Pajaro and Santa Cruz Railroad Company, is the owner of a line of railroad commencing at or near the town of Pajaro, in the County of Monterey, and running thence in a general northerly and northwesterly direction to a point at or near the town of Santa Cruz, in the County of Santa Cruz, a distance of 21.2 miles, more or less; also, commencing at or near Aptos, in said County of Santa Cruz, and running thence northerly and northeasterly for a distance of five miles, more or less. The estimated length of said railroad and branch being 26.2 miles, more or less.

AND WHEREAS, the party of the fourth part, the Monterey Railroad Company, is the owner of a line of railroad commencing at or near Castroville Station, in the County of Monterey, there connecting with the Southern Pacific Railroad, and running thence in a general southwesterly direction to a point at or near Monterey in said county, a distance of fifteen and twelve hundredths miles, more or less.

AND WHEREAS, the party of the fifth part, the Monterey Extension Railroad Company, was heretofore, to wit, on the fifth day of January, 1888, duly incorporated and organized under the laws of the State of California, for the purpose of purchasing, constructing, owning, maintaining and operating a line of railroad, commencing at or near the City of Monterey, there connecting with the Monterey Railroad, and running thence in a general northwesterly direction to a point at or near Pacific Grove Retreat, thence in a general southwesterly direction to a point at or near the

mouth of the Carmel River, all in the County of Monterey, a distance of sixteen miles, more or less.

AND WHEREAS, The party of the sixth part, the Southern Pacific Branch Railway Company, was heretofore, to-wit, on the tenth day of April, 1886, duly incorporated and organized under the laws of the State of California, for the purpose of owning, constructing, maintaining and operating a line of steam railroad in the Counties of San Luis Obispo, Santa Barbara, Ventura and Los Angeles, commencing at a point at or near San Miguel, in the County of San Luis Obispo, there connecting with the Southern Pacific Railroad, and running thence in a general southeasterly direction through and into the aforesaid counties, to a connection with said Southern Pacific Railroad at or near Saugus, in Los Angeles County, a distance of two hundred and fifty miles, more or less.

AND WHEREAS, The party of the seventh part, the San Pablo and Tulare Railroad Company, is the owner of a line of railroad commencing at or near the town of Martinez, in the County of Contra Costa, and running thence in a general southeasterly direction through the County of Alameda, to a point at or near the town of Tracy, in the County of San Joaquin, a distance of 47.58 miles, more or less.

AND WHEREAS, The party of the eighth part, the San Pablo and Tulare Extension Railroad Company, was heretofore, to-wit, on the fifth day of February, 1887, duly incorporated and organized under the laws of the State of California, for the purpose of owning, constructing, maintaining and operating a line of steam railroad, commencing at or near the town of Tracy, in

the County of San Joaquin, there connecting with the San Pablo and Tulare Railroad, and thence running in a general southeasterly direction through the Counties of San Joaquin, Stanislaus, Merced, Fresno and Tulare, to a connection with the Southern Pacific Railroad, at or near Pampa, in the County of Kern, a distance of two hundred and sixty miles, more or less.

AND WHEREAS, The party of the ninth part, the San Ramon Valley Railroad Company, was heretofore, to-wit, on the twenty-third day of April, 1888, duly incorporated and organized under the laws of the State of California, for the purpose of owning, maintaining and operating a line of railroad, commencing at a point on the line of the San Pablo and Tulare Railroad, at or near Avon, in the County of Contra Costa, and running thence to a point on the Central Pacific Railroad, at or near Pleasanton, in the County of Alameda, a distance of thirty-five miles, more or less.

AND WHEREAS, The party of the tenth part, the Stockton and Copperopolis Railroad Company, is the owner of a line of railroad commencing at or near the town of Stockton, in the County of San Joaquin, and running thence in a general easterly direction to a point at or near Milton, in the County of Calaveras; also, commencing at or near Peters, in the County of San Joaquin, and running thence southeasterly to a point at or near Oakdale, in the County of Stanislaus, a distance of 44.37 miles, more or less.

AND WHEREAS, The party of the eleventh part, the Stockton and Tulare Railroad Company, was heretofore, to-wit: on the twenty-sixth day of November, 1887, duly incorporated and organized under the laws of the State of California,

for the purpose of constructing, owning, maintaining and operating a line of steam railroad, with branches thereto, as follows: The main line of said railroad commencing at or near Oakdale, in the County of Stanislaus, there connecting with the Stockton and Copperopolis Railroad, and running thence in a general southeasterly direction, through and into the Counties of Stanislaus, Merced, Fresno and Tulare, there connecting with the line of the Southern Pacific Railroad, at or near the town of Poso, in Kern County, a distance of two hundred miles, more or less; the branches to said road are as follows:

First—Commencing at or near the town of Modesto, in the County of Stanislaus, there connecting with the Central Pacific Railroad, and running thence in an easterly direction, to a connection with the aforesaid main line, a distance of sixteen miles, more or less.

Second—Commencing at or near Merced, in the County of Merced, there connecting with said Central Pacific Railroad, and running thence easterly, to a connection with the aforesaid main line, a distance of ten miles, more or less.

Third—Commencing at or near Syeamore, in the County of Fresno, there connecting with the line of said Central Pacific Railroad, and running thence easterly, to a connection with the aforesaid main line, a distance of ten miles, more or less.

Fourth—Commencing at or near Fresno, in the County of Fresno, there connecting with the main line of said Central Pacific Railroad, and running thence in a general easterly direction, to a connection with the aforesaid main line, a distance of ten miles, more or less.

Fifth—Commencing at or near Tulare, in the County of Tulare, there connecting with the line of the Southern Pacific Railroad, and running thence in a general easterly direction, to a connection with the aforesaid main line, a distance of sixteen miles, more or less.

Said main line and branches being two hundred and sixty-two miles in length, more or less.

AND WHEREAS, The party of the twelfth part, the San Joaquin Valley and Yosemite Railroad Company, was heretofore, to-wit, on the twelfth day of February, 1886, duly incorporated and organized, under the laws of the State of California, for the purpose of constructing, maintaining and operating a line of railroad, commencing at a point on the line of the Southern Pacific Railroad, at or near Berenda Station, in Fresno County, and running thence northeasterly, to a point at or near Perry's Ranch, in said county, a distance of twenty-five miles, more or less.

AND WHEREAS, The party of the thirteenth part, the Los Angeles and San Diego Railroad Company, was heretofore, to-wit, on the ninth day of October, 1876, duly incorporated and organized under the laws of the State of California, for the purpose of constructing, owning, maintaining and operating a line of railroad and telegraph, commencing at or near the City of Los Angeles, in the County of Los Angeles, and running thence in a southeasterly direction, to the town of Anaheim in said county, and thence in a south-easterly direction through said Counties of Los Angeles and San Diego, to a point at or near the City of San Diego, in said last mentioned county, a distance of one hundred and forty miles, more or less.

AND WHEREAS, the party of the fourteenth part, the Los Angeles and Independence Railroad Company, is the owner of a line of railroad, commencing at or near the City of Los Angeles, and running thence westerly, to Santa Monica, in said county, a distance of eighteen fifty one-hundredths miles, more or less.

AND WHEREAS, the party of the fifteenth part, the Long Beach, Whittier and Los Angeles County Railroad Company, was heretofore, to-wit, on the fifteenth day of December, 1887, duly incorporated and organized under the laws of the State of California, for the purpose of constructing, owning, maintaining and operating a line of railroad, commencing at or near Long Beach, in the County of Los Angeles, and running thence in a general northeasterly direction to Whittier, thence northwesterly to Ramona, a distance of thirty miles, more or less. Also, commencing at Los Angeles, and running thence in an easterly direction, to a point on the main line of the Southern Pacific Railroad, between El Monte and Puenta, and thence in a northeasterly direction, to a point, on or near San Dimos Creek, a distance of thirty miles, more or less, all in said County of Los Angeles, and aggregating sixty miles in length, more or less.

AND WHEREAS, the party of the sixteenth part, the Long Beach Railroad Company, was heretofore, to-wit, on the 28th day of October, 1887, duly incorporated and organized under the laws of the State of California, for the purpose of constructing, maintaining and operating a line of steam railroad in the County of Los Angeles, commencing at a point at or near Long Beach Junction, on the line of the Los Angeles and San Pedro

Railroad, in said county, and running thence to the town of Long Beach, and thence in an easterly direction to the boundary line between the Ranchos Los Cerritos and Los Alamitos, in said county, a distance of four miles, more or less.

AND WHEREAS, the party of the seventeenth part, the Southern Pacific Railroad Extension Company, was heretofore, to-wit; on the twentieth day of February, 1888, duly incorporated and organized under the laws of the State of California, for the purpose of purchasing, constructing, owning, maintaining and operating a line of railroad, commencing at the end of the constructed line of the Southern Pacific Railroad between the towns of Wilmington and San Pedro, in the County of Los Angeles, and running thence in a general southerly direction through said town of San Pedro to a point at or near Point Fermin; thence westerly through the lands of the San Pedro Harbor, Dock and Land Association to the westerly boundary of said lands, all in the County of Los Angeles, and being five miles in length, more or less.

AND WHEREAS, the party of the eighteenth part, the Ramona and San Bernardino Railroad Company, was heretofore, to-wit; on the twenty-fourth day of April, 1888, duly incorporated and organized under the laws of the State of California, for the purpose of constructing, owning and operating a line of railroad from a point at or near Ramona, in Los Angeles county, to a point at or near Crafton, in the County of San Bernardino, a distance of 71 miles, more or less.

AND WHEREAS, said parties, and all of them, now are, and ever since their organization and incorpora-

tion have been, railroad corporations duly and lawfully organized, and existing as such, under the laws of the State of California, relating to the formation and existence of railroad corporations.

AND WHEREAS, said respective parties believe that a consolidation and amalgamation of their capital stocks, their debts, properties, assets and franchises, will be mutually advantageous.

AND WHEREAS, the respective Boards of Directors of said corporations, parties hereto, have agreed upon the consolidation and amalgamation of said corporation, their debts, properties, assets and franchises in the following manner, to wit:

First—That the said amalgamation and consolidation shall be made at once, and that the name and style of the amalgamated and consolidated corporation shall be Southern Pacific Railroad Company. That it shall continue in existence for a period of fifty years from the date of these articles.

Second—That the several capital stocks, debts, properties, assets and franchises, held, owned or possessed by each of said corporations shall be vested in said amalgamated and consolidated corporation, the Southern Pacific Railroad Company, as fully as the same are now severally held and enjoyed by them respectively, subject however, to all the conditions, stipulations, contracts, liens, claims and charges thereon, and to all debts of said respective corporations.

Third—That the object, the purposes, the capital stock, the Board of Directors and the principal place of business shall be as expressed in the articles of incorporation hereinafter set out.

Fourth—That the stockholders of each of said corporations, parties hereto, shall have issued to them the same number of shares of the capital stock of the amalgamated and consolidated corporation as they own and hold of the capital stock of the respective corporations of which they are members, and upon the same terms and conditions.

AND WHEREAS, The holders of more than three-fourths in value of all the stock of each of said respective corporations, parties hereto, have given written consent to the amalgamation and consolidation of said corporations in the manner agreed upon, as aforesaid, by their respective Boards of Directors, and for the purposes expressed in the Articles of Incorporation following:

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, That the parties hereto, in pursuance of the laws of the State of California, in such cases made and provided, do hereby amalgamate and consolidate their capital stock, debts, properties, assets and franchises, for the uses and purposes aforesaid, and do hereby vest the same in the said consolidated and amalgamated corporation, the Southern Pacific Railroad Company, and in pursuance of said consolidation and amalgamation, and in order to more fully carry the same into force and effect, do hereby adopt the following Articles of Incorporation:

I.

The name of said amalgamated and consolidated corporation shall be Southern Pacific Railroad Company.

II.

The object and purpose of said amalgamated and consolidated corporation shall be to construct, own, operate and maintain lines of steam railroad and telegraph within the State of California, and to carry passengers and freights on and over said lines of railroad for hire.

III.

The kinds of railroads to be owned and operated are single or double-track steam railroads, having either a standard gauge or narrow gauge.

IV.

The places to and from which said lines of railroad are to run, are as follows:

First—Commencing at the City and County of San Francisco, in the State of California, and running thence through the City and County of San Francisco, the Counties of San Mateo, Santa Clara, San Benito, Monterey, Fresno, Tulare, Kern and San Bernardino, by way of Mojave, to Needles, on the Colorado River, in the County of San Bernardino, State of California, a distance of six hundred and thirty-five and eighty-seven one-hundredths miles, as near as may be; also, a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to Yuma, in the County of San Diego, a distance of three hundred and fifty-six and seven-tenths miles, as near as may be; also, a line of railroad from the town of Gilroy, in the county of Santa Clara, in said State, passing through said county and the Counties of Santa Cruz, San Benito and Monterey,

to a point at or near Salinas City, in said last-named county, a distance of thirty-five and one-tenth miles, as near as may be; and also, from a point on said road aforesaid, at or near Salinas City, in the County of Monterey, southerly to a point in Kern county south of Tulare Lake, intersecting the San Joaquin division of the said Southern Pacific Railroad, said road passing into or through the Counties of Monterey, San Luis Obispo and Kern, and being, as near as may be, two hundred miles in length; also, commencing at or near Hillsdale, in Santa Clara county, and running thence to a point at or near New Almaden, in Santa Clara county, a distance of 7.8 miles, more or less, the aggregate length of all of said railroads being one thousand two hundred and thirty-five and forty-seven one-hundredths miles.

Second—Commencing at or near San Miguel, in the County of San Luis Obispo, and running thence southerly through the Counties of San Luis Obispo, Santa Barbara, Ventura and Los Angeles, to a point at or near Saugus, in Los Angeles county, on the line of the Southern Pacific Railroad, a distance of 250 miles, more or less. Also, commencing at or near Castroville, in Monterey county, and running thence southwesterly to a point at or near Monterey, thence northeasterly to Pacific Grove Retreat, and thence southwesterly to a point at or near the mouth of the Carmel River, a distance of 31.12 miles, more or less, and all in the County of Monterey; also, commencing at or near Pajaro, in Monterey county, and running thence northerly and northwesterly to a point at or near

Santa Cruz, in Santa Cruz county, a distance of 21.2 miles, more or less; also, commencing at or near Aptos, in Santa Cruz county, and running thence northerly and northeasterly to a point at or near Loma Prieta, in the same county, a distance of five miles, more or less, aggregating 307.32 miles, more or less.

Third—Commencing at or near Martinez, in Contra Costa county, and running easterly and southeasterly, through the County of Alameda, via Antioch, to a point at or near Tracy, in San Joaquin county, and thence in a general southeasterly direction, through the Counties of San Joaquin, Stanislaus, Merced, Fresno and Tulare, to a connection with the Southern Pacific Railroad, at or near Pampa, in the County of Kern, a distance of 307.58 miles, more or less.

Fourth—Commencing at or near the City of Stockton, and running thence easterly and northeasterly to or near Milton, in the County of Calaveras, a distance of 25.68 miles, more or less; also, commencing at or near Peters, in the County of San Joaquin, and running thence in a southeasterly direction through the Counties of Stanislaus, Merced, Fresno, Tulare, to a connection with the Southern Pacific Railroad at or near Poso, in Kern county, a distance of 218.69 miles, more or less, with a branch from said last-mentioned line westerly to or near Modesto, in Stanislaus county, a distance of about sixteen miles, a branch westerly, to a point on Central Pacific Railroad, at or near Merced, in Merced County, a distance of about ten miles; a branch westerly to a connection with the Central Pacific Railroad, at or near Sycamore, in Fresno County, a dis-

tancee of about ten miles; a branch westerly to a connection with the Central Pacific Railroad, at or near Fresno, in Fresno County, a distance of about ten miles, and a branch westerly to a connection with the Southern Pacific Railroad at or near Tulare in Tulare county, a distance of about sixteen miles; aggregating in all 306.37 miles, more or less.

Fifth—Commencing at or near Berenda, in the County of Fresno, running thence northeasterly to a point at or near Perry's Ranch, in said county, a distance of twenty-five miles, more or less.

Sixth—Commencing at or near Los Angeles, in the County of Los Angeles, and running thence southeasterly to Anaheim and Santa Ana, in said county, and thence southeasterly through the Counties of Los Angeles and San Diego, to a point at or near the City of San Diego, a distance of 140 miles, more or less.

Seventh—Commencing at or near Los Angeles, in the County of Los Angeles, and running thence northwesterly to Santa Monica, a distance of 18.50 miles, more or less.

Eighth—Commencing at or near Los Angeles in the County of Los Angeles, and running thence southwest-
erly to San Pedro; thence to a point at or near Point Fermin; thence westerly through the lands of the San Pedro Harbor Dock and Land Association, to a point at or near the westerly boundary of said lands; all in said County of Los Angeles, and being 29.65 miles in length, more or less.

Ninth—Commencing at or near Long Beach, in the County of Los Angeles, and running thence in a general northeasterly direction to Whittier; thence north-

westerly to a point at or near Ramona; also, commencing at or near Los Angeles, running thence easterly to a point on the main line of the Southern Pacific Railroad, between El Monte and Puente, and thence in a northeasterly direction to a point on or near San Dimos Creek; all in said County of Los Angeles, and being sixty miles in length, more or less.

Tenth—Commencing at or near Long Beach Junction, in the County of Los Angeles, and running thence to the town of Long Beach, and thence in an easterly direction to the boundary line, between the Rancho Los Cerritos and Rancho Los Alamitos, in the County of Los Angeles, a distance of four miles, more or less.

Eleventh—Commencing at or near Ramona, in Los Angeles County, and running thence to a point at or near Crafton, in the County of San Bernardino, a distance of seventy-one miles, more or less.

Twelfth—Commencing at a point on the line of the San Pablo and Tulare Railroad, at or near Avon, in the County of Contra Costa, and running thence to a point on the Central Pacific Railroad, at or near Pleasanton, in the County of Alameda, a distance of thirty-five miles, more or less.

Said lines of railroad lying all within the State of California, and being composed of the lines of the several railroads hereinbefore mentioned and described; together with such other and further appendages and adjuncts, including branches and spur tracks in the counties hereinbefore named, or in one or more thereof as the Board of Directors of said consolidated and amalgamated company may direct from time to time.

V.

The estimated length of said railroad and its branches, in the aggregate, is two thousand five hundred and thirty-nine and eighty-nine one-hundredths (2,539.89) miles, as near as may be.

VI.

The place where the principal business of said corporation is to be transacted is the City and County of San Francisco, State of California.

VII.

The term for which said corporation is to exist is fifty years from the date hereof.

VIII.

The number of Directors of said corporation is to be seven, and the names and residence of those appointed for the first year are as follows:

NAMES.	RESIDENCE.
Chas. F. Crocker,	San Francisco, California.
Timothy Hopkins,	San Mateo County, California.
Charles Mayne,	San Francisco, California.
W. V. Huntington,	San Francisco, California.
N. N. Smith,	San Francisco, California.
J. L. Willeutt,	Oakland, California.
A. N. Towne,	San Francisco, California.

IX.

The capital stock of said corporation is to be one hundred and forty-two million, nine hundred and ninety thousand (142,990,000) dollars, divided into one million, four hundred and twenty-nine thousand, nine

hundred (1,429,900) shares, of the par value of one hundred dollars each.

X.

The amount of the capital stock actually subscribed in each of said corporations, parties hereto at the time of their formation, and the names of the persons by whom the same was subscribed, and the number of shares subscribed to, and then held by each, was as set out in the original articles of incorporation of the several companies, now consolidated and amalgamated, and the same was, and now is more than one thousand dollars per mile for each mile of each of said roads.

XI.

That of the capital stock of each of said corporations there had at the time of their formation (where the same was required by law) been actually paid to the respective Treasurers thereof, the amounts specified in their original articles of incorporation verified by the affidavits attached to the copies thereof, filed in the office of Secretary of State, of the State of California, and the amounts so paid in were in each case ten per cent of the subscribed capital stock.

IN WITNESS WHEREOF, the said parties have caused these presents to be signed by their respective Presidents or Vice-Presidents and Secretaries, and their corporate seals to be hereunto affixed, pursuant to resolutions of their respective Boards of Directors, this fourth (4th) day of May, A. D. 1888.

(Seal)

CHAS. CROCKER,

President Southern Pacific Railroad Company.

J. L. WILLCUTT,

Secretary Southern Pacific
Railroad Company.

1466 SOUTHERN PACIFIC RAILROAD CO., ET AL.,

(Seal)

CHAS. F. CROCKER,
President San Jose & Almaden Rail-
road Company.

J. A. WILLCUTT,

Secretary San Jose & Almaden
Railroad Company.

(Seal)

CHAS. F. CROCKER,
President Pajaro & Santa Cruz Rail-
road Company.

J. L. WILLCUTT,

Secretary Pajaro & Santa Cruz
Railroad Company.

(Seal)

CHAS. CROCKER,
President Monterey Railroad Com-
pany.

J. L. WILLCUTT,

Secretary Monterey Railroad
Company.

(Seal)

CHAS. F. CROCKER,
President Monterey Extension Rail-
road Company.

J. L. WILLCUTT,

Secretary Monterey Extension
Railroad Company.

(Seal)

CHAS. F. CROCKER,
President Southern Pacific Branch
Railway Company.

J. L. WILLCUTT,

Secretary Southern Pacific Branch
Railway Company.

(Seal)

CHAS. CROCKER,
Vice-President San Pablo & Tulare
Railroad Company.

W. V. HUNTINGTON,

Secretary San Pablo & Tulare
Railroad Company.

(Seal)

CHAS. F. CROCKER,
President San Pablo & Tulare Ex-
tension Railroad Company.

W. V. HUNTINGTON,

Secretary San Pablo & Tulare Extension
Railroad Company.

(Seal)

JAS. P. BROWN,
President San Ramon Valley Rail-
road Company.

D. D. STUBBS,

Secretary San Ramon Valley
Railroad Company.

(Seal)

CHAS. F. CROCKER,
Vice-President Stockton & Copper-
opolis Railroad Company.

W. V. HUNTINGTON,

Secretary Stockton & Copperopolis
Railroad Company.

(Seal)

CHAS. F. CROCKER,
Vice-President Stockton & Tulare
Railroad Company.

W. V. HUNTINGTON,

Secretary Stockton & Tulare
Railroad Company.

(Seal) CHAS. F. CROCKER,
President San Joaquin Valley &
Yosemite Railroad Company.

W. V. HUNTINGTON,
Secretary San Joaquin Valley & Yosemite
Railroad Company.

(Seal) CHAS. F. CROCKER,
President Los Angeles & San Diego
Railroad Company.

J. L. WILLCUTT,
Secretary Los Angeles & San Diego
Railroad Company.

(Seal) CHAS. F. CROCKER,
President Los Angeles & Independ-
ence Railroad Company.

F. S. DOUTY,
Secretary Los Angeles & Independ-
ence Railroad Company.

(Seal) CHAS. F. CROCKER,
President Long Beach, Whittier &
Los Angeles County Railroad
Company.

W. V. HUNTINGTON,
Secretary Long Beach, Whittier &
Los Angeles County Rail-
road Company.

(Seal) CHAS. F. CROCKER,
President Long Beach Railroad
Company.

F. S. DOUTY,
Secretary Long Beach Railroad
Company.

(Seal)

CHAS. CROCKER,
President Southern Pacific Railroad
Extension Company.

J. L. WILLCUTT,

Secretary Southern Pacific Railroad
Extension Company.

(Seal.)

G. L. LANSING,
President Ramona and San Ber-
nardino Railroad Company.

C. E. GREEN,

Secretary Ramona and San Bernar-
dino Railroad Company.

STATE OF CALIFORNIA,

City and County of San Francisco. } ss.

On this, the fourth (4th) day of May, in the year one thousand eight hundred and eighty-eight, before me, E. B. Ryan, a Notary Public in and for the said City and County of San Francisco, duly commissioned and qualified, personally appeared Charles Crocker, known to me to be the President, and J. L. Willcutt, known to me to be the Secretary of the Southern Pacific Railroad Company, that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(Notarial Seal.)

E. B. RYAN,

Notary Public

In and for the City and County of San Francisco, State of California.

STATE OF CALIFORNIA, }
City and County of San Francisco. } ss.

On this, the fourth (4th) day of May, in the year one thousand eight hundred and eighty-eight, before me, E. B. Ryan, a Notary Public in and for the said City and County of San Francisco, duly commissioned and qualified, personally appeared Charles F. Crocker, known to me to be the President, and J. L. Willeutt, known to me to be the Secretary of the San Jose and Almaden Railroad Company, that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(Notarial Seal.)

E. B. RYAN,
Notary Public

In and for the City and County of San Francisco, State of California.

STATE OF CALIFORNIA, }
City and County of San Francisco, } ss.

On this, the fourth (4th) day of May, in the year one thousand eight hundred and eighty-eight, before me, E. B. Ryan, a Notary Public in and for the said City and County of San Francisco, duly commissioned and qualified, personally appeared Charles F. Crocker, known to me to be the President, and J. L. Willeutt, known to me to be the Secretary of the Pajaro and Santa Cruz Railroad Company, that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(Notarial Seal.)

E. B. RYAN,

Notary Public

In and for the City and County of San Francisco, State of California.

STATE OF CALIFORNIA, }
City and County of San Francisco, } ss.

On this the fourth (4th) day of May, in the year one thousand eight hundred and eighty-eight, before me, E. B. Ryan, a Notary Public in and for the said City and County of San Francisco, duly commissioned and qualified, personally appeared Charles Crocker, known to me to be the President, and J. L. Willcutt, known to me to be the Secretary of the Monterey Railroad Company, that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(Notarial Seal)

E. B. RYAN,

Notary Public

In and for the City and County of San Francisco, State of California.

STATE OF CALIFORNIA, }
City and County of San Francisco. } ss.

On this the fourth (4th) day of May, in the year one thousand eight hundred and eighty-eight, before me, E. B. Ryan, a notary public in and for the said City and County of San Francisco, duly commissioned and qualified, personally appeared Charles F. Crocker, known to me to be the President, and J. L. Willcutt, known to me to be the Secretary of the Monterey Extension Railroad Company, that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(Notarial Seal.)

E. B. RYAN,

Notary Public

In and for the City and County of San Francisco, State of California.

STATE OF CALIFORNIA, }
City and County of San Francisco. } ss.

On this, the fourth (4th) day of May, in the year one thousand eight hundred and eighty-eight, before me, E. B. Ryan, a Notary Public in and for the said City and County of San Francisco, duly commissioned and qualified, personally appeared Charles F. Crocker, known to me to be the President, and J. L. Willcutt, known to me to be the Secretary of the Southern Pacific Branch Railway Company, that executed the

within instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(Notarial Seal.)

E. B. RYAN,

Notary Public

In and for the City and County of San Francisco, State of California.

STATE OF CALIFORNIA, }
City and County of San Francisco. } ss.

On this, the fourth (4th) day of May, in the year one thousand eight hundred and eighty-eight, before me, E. B. Ryan, a notary public in and for the said City and County of San Francisco, duly commissioned and qualified, personally appeared Charles Crocker, known to me to be the Vice-President, and W. V. Huntington, known to me to be the Secretary of the San Pablo and Tulare Railroad Company, that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(Notarial Seal.)

E. B. RYAN,

Notary Public

In and for the City and County of San Francisco, State of California.

STATE OF CALIFORNIA, } ss.
City and County of San Francisco. }

On this, the fourth (4th) day of May, in the year one thousand eight hundred and eighty eight, before me, E. B. Ryan, a notary public in and for the said City and County of San Francisco, duly commissioned and qualified, personally appeared Charles F. Crocker known to me to be the President, and W. V. Huntington, known to me to be the Secretary of the San Pablo and Tulare Extension Railroad Company, that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(Notarial Seal.)

E. B. RYAN,

Notary Public

In and for the City and County of San Francisco, State of California.

STATE OF CALIFORNIA, } ss.
City and County of San Francisco. }

On this the fourth (4th) day of May, in the year one thousand eight hundred and eighty-eight, before me, E. B. Ryan, a notary public in and for the said City and County of San Francisco, duly commissioned and qualified, personally appeared Jas. P. Brown, known to me to be the President, and D. D. Stubbs, known to me to be the Secretary of the San Ramon Valley Railroad Company, that executed the within instru-

ment, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(Notarial Seal.)

E. B. RYAN,

Notary Public

In and for the City and County of San Francisco, State of California.

STATE OF CALIFORNIA,
City and County of San Francisco. } ss.

On this, the fourth (4th) day of May, in the year one thousand eight hundred and eighty-eight, before me, E. B. Ryan, a notary public in and for the said City and County of San Francisco, duly commissioned and qualified, personally appeared Charles F. Crocker, known to me to be the Vice-President, and W. V. Huntington, known to me to be the Secretary of the Stockton and Copperopolis Railroad Company, that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(Notarial Seal.)

E. B. RYAN,

Notary Public

In and for the City and County of San Francisco, State of California.

STATE OF CALIFORNIA, } ss.
City and County of San Francisco. }

On this, the fourth (4th) day of May, in the year one thousand eight hundred and eighty-eight, before me, E. B. Ryan, a notary public in and for the said City and County of San Francisco, duly commissioned and qualified, personally appeared Charles F. Crocker, known to me to be the Vice-President, and W. V. Huntington, known to me to be the Secretary of the Stockton and Tulare Railroad Company, that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(Notarial Seal.)

E. B. RYAN,

Notary Public in and for the City and County
of San Francisco, State of California.

STATE OF CALIFORNIA, } ss.
City and County of San Francisco. }

On this the fourth (4th) day of May, in the year one thousand eight hundred and eighty-eight, before me, E. B. Ryan, a Notary Public in and for the City and County of San Francisco, duly commissioned and qualified, personally appeared Charles F. Crocker, known to me to be the President, and W. V. Huntington, known to me to be the Secretary of the San Joaquin Valley and Yosemite Railroad Company, that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(Notarial Seal.)

E. B. RYAN,

Notary Public in and for the City and County
of San Francisco, State of California.

STATE OF CALIFORNIA,

City and County of San Francisco.

} ss.

On this the fourth (4th) day of May, in the year one thousand eight hundred and eighty-eight, before me, E. B. Ryan, a notary public in and for the said City and County of San Francisco, duly commissioned and qualified, personally appeared Charles F. Crocker, known to me to be the President, and J. L. Willcutt, known to me to be the Secretary of the Los Angeles and San Diego Railroad Company, that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(Notarial Seal.)

E. B. RYAN,

Notary Public

In and for the City and County of San Francisco, State of California.

STATE OF CALIFORNIA,

City and County of San Francisco.

} ss.

On this the fourth (4th) day of May, in the year one thousand eight hundred and eighty-eight, before

me, E. B. Ryan, a notary public in and for the said City and County of San Francisco, duly commissioned and qualified, personally appeared Charles F. Crocker, known to me to be the President, and F. S. Douty, known to me to be the Secretary of the Los Angeles and Independence Railroad Company, that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(Notarial Seal.)

E. B. RYAN,

Notary Public

In and for the City and County of San Francisco, State of California.

STATE OF CALIFORNIA, |
City and County of San Francisco, } ss.

On this the fourth (4th) day of May, in the year one thousand eight hundred and eighty-eight, before me, E. B. Ryan, a notary public in and for the said City and County of San Francisco, duly commissioned and qualified, personally appeared Charles F. Crocker, known to me to be the President, and W. V. Huntington, known to me to be the Secretary of the Long Beach, Whittier and Los Angeles County Railroad Company, that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(Notarial Seal)

E. B. RYAN,

Notary Public

In and for the City and County of San Francisco, State of California.

STATE OF CALIFORNIA, }
City and County of San Francisco. } ss.

On this the fourth (4th) day of May, in the year one thousand eight hundred and eighty-eight, before me, E. B. Ryan, a notary public in and for the said City and County of San Francisco, duly commissioned and qualified, personally appeared Charles F. Crocker, known to me to be the President, and F. S. Douty, known to me to be the Secretary of the Long Beach Railroad Company, that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(Notarial Seal.)

E. B. RYAN,

Notary Public

In and for the City and County of San Francisco, State of California.

STATE OF CALIFORNIA, }
City and County of San Francisco. } ss.

On this, the (4th) fourth day of May, in the year one thousand eight hundred and eighty-eight, before me,

E. B. Ryan, a notary public in and for the said City and County of San Francisco, duly commissioned and qualified, personally appeared Charles Crocker, known to me to be the President, and J. L. Willett, known to me to be the Secretary of the Southern Pacific Railroad Extension Company, that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(Notarial Seal.)

E. B. RYAN,

Notary Public

In and for the City and County of San Francisco, State of California.

STATE OF CALIFORNIA,
City and County of San Francisco. } ss.

On this the fourth (4th) day of May, in the year one thousand eight hundred and eighty-eight, before me, E. B. Ryan, a notary public in and for the said City and County of San Francisco, duly commissioned and qualified, personally appeared G. L. Lansing, known to me to be the President, and Chas. E. Green, known to me to be the Secretary of the Ramona and San Bernardino Railroad Company, that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(Notarial Seal.)

E. B. RYAN,

Notary Public

In and for the City and County of San Francisco, State of California.

THIS IS TO CERTIFY, That we, the undersigned, being the holders of more than three-fourths in value of all stock of the Southern Pacific Railroad Company, party of the first part, to the foregoing articles of amalgamation and consolidation, did, prior to said amalgamation and consolidation, assent, and do hereby assent thereto, and that we do hereby, as such stockholders, subscribe to the foregoing articles of association, incorporation, amalgamation and consolidation.

Done this fourth day of May, 1888.

CHAS. F. CROCKER, (S. P. SOUTHERN PACIFIC COMPANY,
Co.

W. V. HUNTINGTON, Seal.) By G. L. Lansing, Secretary,
J. L. WILLCUTT. N. T. SMITH,

C. P. HUNTINGTON, (P. I. Co. PACIFIC IMPROVEMENT CO.,
TIMOTHY HOPKINS, (Seal.) By F. S. Douty, Secretary.

CHAS. CROCKER. LELAND STANFORD,

A. N. TOWNE. By Ariel Lathrop, Att'y. in fact.

THIS IS TO CERTIFY, That we, the undersigned, being the holders of more than three-fourths in value of all stock of the San Jose and Almaden Railroad Company, party of the second part to the foregoing articles of amalgamation and consolidation, did, prior to said

amalgamation and consolidation, assent, and do hereby assent thereto, and that we do hereby, as such stockholders, subscribe to the foregoing articles of association, incorporation, amalgamation and consolidation.

Done this fourth day of May, 1888.

CHAS. F. CROCKER, (P. I. PACIFIC IMPROVEMENT CO.,
J. L. WILLCUTT. Co. Seal.) By F. S. Douty, Secretary.
N. T. SMITH. ARIEL LATHROP.
A. C. BASSETT.

THIS IS TO CERTIFY, that we, the undersigned, being the holders of more than three-fourths in value of all stock of the Pajaro and Santa Cruz Railroad Company, party of the third part to the foregoing articles of amalgamation and consolidation, did prior to said amalgamation and consolidation assent, and do hereby assent thereto, and that we do hereby, as such stockholders, subscribe to the foregoing articles of association, incorporation, amalgamation and consolidation.

Done this fourth day of May, 1888.

CHAS. F. CROCKER. TIMOTHY HOPKINS.
N. T. SMITH. J. L. WILLCUTT.
(P. I. PACIFIC IMPROVEMENT CO. C. E. GREEN.
Co. By F. S. Douty, Secretary. S. T. GAGE.
Seal.) A. C. BASSETT. CREED HAYMOND.

THIS IS TO CERTIFY, that we, the undersigned, being the holders of more than three-fourths in value of all stock of the Monterey Railroad Company, party of the fourth part to the foregoing articles of amalgama-

tion and consolidation, did prior to said amalgamation and consolidation assent, and do hereby assent thereto, and that we do hereby, as such stockholders, subscribe to the foregoing articles of association, incorporation, amalgamation and consolidation.

Done this fourth day of May, 1888.

CHAS. F. CROCKER.

CHAS. CROCKER.

W. V. HUNTINGTON.

N. T. SMITH.

J. L. WILLCUTT.

LELAND STANFORD,

By Ariel Lathrop, Att'y in fact.

(P. I. Co.) PACIFIC IMPROVEMENT CO.,

(SEAL.) By F. S. Douty, Secretary. MRS. M. F. S. SEARLES.

C. P. HUNTINGTON.

By Timothy Hopkins,

TIMOTHY HOPKINS.

Att'y in fact.

THIS IS TO CERTIFY, That we, the undersigned, being the holders of more than three-fourths in value of all stock of the Monterey Extension Railroad Company, party of the fifth part to the foregoing articles of amalgamation and consolidation, did prior to said amalgamation and consolidation, assent, and do hereby assent thereto, and that we do hereby, as such stockholders, subscribe to the foregoing articles of association, incorporation, amalgamation and consolidation.

Done this fourth day of May, 1888.

CHAS. F. CROCKER.

CHAS. CROCKER.

W. V. HUNTINGTON.

N. T. SMITH.

TIMOTHY HOPKINS.

THIS IS TO CERTIFY, That we, the undersigned, being the holders of more than three-fourths in value of all

stock of the Southern Pacific Branch Railway Company, party of the sixth part to the foregoing articles of amalgamation and consolidation, did, prior to said amalgamation and consolidation, assent, and do hereby assent thereto, and that we do hereby, as such stockholders, subscribe to the foregoing articles of association, incorporation, amalgamation and consolidation.

Done this fourth day of May, 1888.

CHAS. F. CROCKER. TIMOTHY HOPKINS.

W. V. HUNTINGTON. J. L. WILLCUTT.

W. E. BROWN. N. T. SMITH.

(P.I.Co. PACIFIC IMPROVEMENT Co., S. T. GAGE.

Seal.) By. F. S. Douty, Secretary.

THIS IS TO CERTIFY, That we, the undersigned, being the holders of more than three-fourths in value of all stock of the San Pablo and Tulare Railroad Company, party of the seventh part to the foregoing articles of amalgamation and consolidation, did, prior to said amalgamation and consolidation, assent, and do hereby assent thereto, and that we do hereby as such stockholders, subscribe to the foregoing articles of association, incorporation, amalgamation and consolidation.

Done this fourth day of May, 1888.

(W. D. Co. WESTERN DEVELOPMENT Co.

Seal.) By F. S. Douty, President.

LELAND STANFORD,

By Ariel Lathrop, Att'y in fact.

CHAS. F. CROCKER. W. V. HUNTINGTON.

TIMOTHY HOPKINS. CHAS. CROCKER.

C. P. HUNTINGTON.

THIS IS TO CERTIFY, That we, the undersigned, being the holders of more than three-fourths in value of all stock of the San Pablo and Tulare Extension Railroad Company, party of the eighth part to the foregoing articles of amalgamation and consolidation, did, prior to said amalgamation and consolidation, assent, and do hereby assent thereto, and that we do hereby, as such stockholders, subscribe to the foregoing articles of association, incorporation, amalgamation and consolidation.

Done this fourth day of May, 1888.

CHAS. F. CROCKER. PACIFIC IMPROVEMENT CO.

TIMOTHY HOPKINS. (P. I. Co.) By F. S. Douty Secretary.
(Seal.)

W. V. HUNTINGTON. C. E. GREEN.

W. E. BROWN.

THIS IS TO CERTIFY, That we, the undersigned, being the holders of more than three-fourths in value of all stock of the San Ramon Valley Railroad Company, party of the ninth part to the foregoing articles of amalgamation and consolidation, did, prior to said amalgamation and consolidation, assent, and do hereby assent thereto, and that we do hereby, as such stockholders, subscribe to the foregoing articles of association, incorporation, amalgamation and consolidation.

Done this fourth day of May, 1888.

A. J. TREAT.

D. D. STUBBS.

G. L. LANSING.

JAS. P. BROWN.

(P. I. Co. PACIFIC IMPROVEMENT CO., W. L. BROWN.

Seal.) By F. S. Douty, Secretary.

THIS IS TO CERTIFY, that we, the undersigned, being the holders of more than three-fourths in value of all stock of the Stockton and Copperopolis Railroad Company, party of the tenth part to the foregoing articles of amalgamation and consolidation, did, prior to said amalgamation and consolidation assent, and do hereby assent thereto, and that we do hereby, as such stockholders, subscribe to the foregoing articles of association, incorporation, amalgamation and consolidation.

Done this fourth day of May, 1888.

W. E. BROWN.	N. T. SMITH.
CHAS. F. CROCKER.	LELAND STANFORD.
TIMOTHY HOPKINS.	By Ariel Lathrop,
C. P. HUNTINGTON.	Att'y in fact.
W. V. HUNTINGTON.	MRS. M. F. S. SEARLES,
E. H. PARDEE.	By Timothy Hopkins,
	Att'y in fact

THIS IS TO CERTIFY, that we, the undersigned, being the holders of more than three-fourths in value of all stock of the Stockton and Tulare Railroad Company, party of the eleventh part to the foregoing articles of amalgamation and consolidation, did, prior to said amalgamation and consolidation, assent, and do hereby assent thereto, and that we do hereby, as such stockholders, subscribe to the foregoing articles of association, incorporation, amalgamation and consolidation.

Done this fourth day of May, 1888.

W. E. BROWN.	TIMOTHY HOPKINS.
LELAND STANFORD.	W. V. HUNTINGTON.
By Ariel Lathrop,	PACIFIC IMPROVEMENT CO.
Att'y. in fact.	
CHAS. F. CROCKER.	(P. I. Co. B. F. S. Douty, Secretary. (Seal.)

THIS IS TO CERTIFY, That we, the undersigned, being the holders of more than three-fourths in value of all stock of the San Joaquin Valley and Yosemite Railroad Company, party of the twelfth part to the foregoing articles of amalgamation and consolidation, did, prior to said amalgamation and consolidation, assent, and do hereby assent thereto, and that we do hereby, as such stockholders, subscribe to the foregoing articles of association, incorporation, amalgamation and consolidation.

Done this fourth day of May, 1888.

CHAS. F. CROCKER. (P. I. Co. PACIFIC IMPROVEMENT CO.,
TIMOTHY HOPKINS. Seal.) By F. S. Douty, Secretary.
W. V. HUNTINGTON. C. E. GREEN,
S. T. GAGE.

THIS IS TO CERTIFY, That we, the undersigned, being the holders of more than three-fourths in value of all stock of the Los Angeles and San Diego Railroad Company, party of the thirteenth part to the foregoing articles of amalgamation and consolidation, did, prior to said amalgamation and consolidation, assent, and do hereby assent thereto, and that we do hereby, as such stockholders, subscribe to the following articles of association, incorporation, amalgamation and consolidation.

Done this fourth day of May, 1888.

(W. D. Co.) WESTERN DEVELOPMENT CO. J. L. WILLCUTT.
(Seal.) By F. S. Douty, President. N. T. SMITH.
C. P. HUNTINGTON. LELAND STANFORD,
TIMOTHY HOPKINS. By Ariel Lathrop,
CHAS. CROCKER. Att'y in fact.

THIS IS TO CERTIFY, That we, the undersigned, being the holders of more than three-fourths in value of all stock of the Los Angeles and Independence Railroad Company, party of the fourteenth part to the foregoing articles of amalgamation and consolidation, did, prior to said amalgamation and consolidation, assent, and do hereby assent thereto, and that we do hereby, as such stockholders, subscribe to the foregoing articles of association, incorporation, amalgamation and consolidation.

Done this fourth day of May, 1888.

(W. D. Co. WESTERN DEVELOPMENT Co., F. S. DOUTY.

(Seal.) By F. S. Douty, President. CHAS. CROCKER

C. P. HUNTINGTON. LELAND STANFORD,

W. V. HUNTINGTON. By Ariel Lathrop,

TIMOTHY HOPKINS. Att'y in fact.

CHAS. F. CROCKER.

THIS IS TO CERTIFY, That we, the undersigned, being the holders of more than three-fourths in value of all stock of the Long Beach, Whittier and Los Angeles County Railroad Company, party of the fifteenth part to the foregoing articles of amalgamation and consolidation, did, prior to said amalgamation and consolidation, assent, and do hereby assent thereto, and that we do hereby as such stockholders, subscribe to the foregoing articles of association, incorporation, amalgamation and consolidation.

Done this fourth day of May, 1888.

LELAND STANFORD,

By Ariel Lathrop,

Attorney in fact. (P. I. PACIFIC IMPROVEMENT Co.,

CHAS. F. CROCKER. Co.

W. V. HUNTINGTON. Seal.)

TIMOTHY HOPKINS.

W. E. BROWN.

By F. S. Douty,

Secretary.

THIS IS TO CERTIFY, that we, the undersigned, being the holders of more than three-fourths in value of all stock of the Long Beach Railroad Company, party of the sixteenth part to the foregoing articles of amalgamation and consolidation, did, prior to said amalgamation and consolidation, assent, and do hereby assent thereto, and that we do hereby, as such stockholders, subscribe to the foregoing articles of association, incorporation, amalgamation and consolidation.

Done this fourth day of May, 1898.

(P. I. Co.	PACIFIC IMPROVEMENT CO.,
Seal.)	By F. S. Douty, Secretary.
F. S. DOUTY.	W. E. BROWN.
TIMOTHY HOPKINS.	C. E. GREEN.
	CHAS. F. CROCKER.

THIS IS TO CERTIFY, that we, the undersigned, being the holders of more than three-fourths in value of all stock of the Southern Pacific Railroad Extension Company, party of the seventeenth part to the foregoing articles of amalgamation and consolidation, did, prior to said amalgamation and consolidation, assent, and do hereby assent thereto, and that we do hereby, as such stockholders, subscribe to the foregoing articles of association, incorporation, amalgamation and consolidation.

Done this fourth day of May, 1888.

(P. I. Co.	PACIFIC IMPROVEMENT CO.,
Seal.)	By F. S. Douty, Seeretary.
TIMOTHY HOPKINS.	CHAS. CROCKER.
W. V. HUNTINGTON.	W. E. BROWN.
	LELAND STANFORD,
	By Ariel Lathrop, Att'y-in-fact.

THIS IS TO CERTIFY, that we, the undersigned, being the holders of more than three-fourths in value of all stock of the Ramona and San Bernardino Railroad Company, party of the eighteenth part to the foregoing articles of amalgamation and consolidation, did, prior to said amalgamation and consolidation, assent, and do hereby assent thereto, and that we do hereby, as such stockholders, subscribe to the foregoing articles of association, incorporation, amalgamation and consolidation.

Done this fourth day of May, 1888.

G. L. LANSING.

CHAS. G. LATHROP.

C. E. GREEN.

FREDK. MADGE.

JAS. P. BROWN.

[Endorsed]: Filed in the office of the County Clerk of the City and County of San Francisco, State of California, this 12 day of May, A. D. 1888. Wm. J. Ruddick, County Clerk. By Wm. A. Davies, Deputy Clerk.

STATE OF CALIFORNIA,
City and County of San Francisco. } ss.

I, Wm. J. Ruddick, County Clerk of the City and County of San Francisco, State of California, hereby certify the foregoing to be a full, true and correct copy of the original articles of association, incorporation, amalgamation and consolidation of the Southern Pacific Railroad Company with the San Jose and Almaden, and sixteen other Railroad Cos., filed in my office on the twelfth (12th) day of May, A. D. 1888.

Attest my hand and my official seal this twelfth day of May, A. D. 1888.

(Seal) Wm. J. RUDDICK, County Clerk.
By Wm. A. Davies, Deputy County Clerk.

[Endorsed]: Filed in the office of the Secretary of State, the 14th day of May, A. D. 1888. W. C. Hendricks, Secretary of State. By H. B. Davidson, Deputy. (Marked) "Defendants' Exhibit before the Special Examiner, No. 89, Stephen Potter, Special Examiner.

I hereby certify that I have compared the foregoing document with the original exhibit, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, Oct. 14, 1893.

[Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk. S. P. Certified copy Articles of Association, Incorporation, Amalgamation and Consolidation of the Southern Pacific Railroad Company with the San Jose and Almaden, and sixteen other Railroad Cos. Dated May 4th, 1888.

(4-83-250)

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER.
No. 90.

Date. THIS INDENTURE, made and entered into this, the first day of April, A. D. 1875, by and between the Southern Pacific Railroad Company, a railroad corporation, duly incorporated and organized under and in pursuance of the laws of the State of California, party of the first part, and D. O. Mills and Lloyd Tevis, of the City and County of San Francisco, California, parties of the second part, WITNESSETH: That

Purpose of Mortgage. WHEREAS, the said party of the first part desires to complete the construction and equipment of its railroad and telegraph lines in the State of California, running from the City of San Francisco in a south-easterly and southeasterly direction by way of Carnadero Junction, Salinas Valley and Polonio Pass to the Colorado River, at or near the "Needles;" also from Carnadero Junction to San Benito; also from Los Gatos Creek via Goshen, to the junction with the first mentioned line between Poso Creek and Kern River; also from the Junction near Tehachapi Pass via Los Angeles to the Texas Pacific Railroad near Fort Yuma; and also from Los Angeles to Wilmington on San Pedro Bay, aggregating eleven hundred and fifty miles of railroad and telegraph line, and to cancel its present bonded indebtedness

Route of Railroad.

for construction secured by a mortgage heretofore made and bearing date November first, eighteen hundred and seventy, and to that end intends and is about to issue its first mortgage bonds upon said railroad and telegraph line, and its rolling stock, fixtures and franchises, and also upon the lands granted to it by Congress, by the Act of Congress, entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," approved July twenty-seventh, eighteen hundred and sixty-six, and the Act entitled "An Act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," approved March third, eighteen hundred and seventy-one, not sold or otherwise disposed of prior to the execution of this mortgage, aggregating, as near as can be estimated, eleven millions of acres; and

WHEREAS, heretofore, to-wit, on the nineteenth day of December, eighteen hundred and seventy-four, the Board of Directors of said company, pursuant to the statute of the State of California in such cases made and provided, at a meeting of said Board, at which all the members thereof were present, did, by a resolution to that effect, which was unanimously adopted and passed, determine and direct that first mortgage bonds upon said railroad and telegraph line, its rolling stock, fixtures and franchises, and upon said

Property
mortgaged
includes
land grants.

Board of
Directors
authorize
mortgage to
be made.

hereinbefore described lands to the number of forty-eight thousand (forty-four thousand of which shall be for one thousand dollars each, and four thousand of which shall be for the sum of five hundred dollars each), in seven series, to be designated by the letters of the alphabet, commencing with the letter "A," and followed by the succeeding letters in regular order to the letter "G," both inclusive, be prepared, executed and issued by the President and Secretary of said Company.

Description of Bonds Series "A" to consist of thirteen thousand bonds for one thousand dollars each, numbered from one to thirteen thousand, both inclusive, and four thousand bonds for five hundred dollars each, numbered from thirteen thousand and one to seventeen thousand, both inclusive. Series "B" to "F," both inclusive, consisting each of five thousand bonds for one thousand dollars each, numbered from seventeen thousand and one to forty-two thousand, both inclusive, and Series "G" consisting of six thousand bonds for one thousand dollars each, numbered from forty-two thousand and one to forty-eight thousand, both inclusive. All of said bonds being payable thirty years after date, with interest at the rate of six per centum per annum, payable semi-annually. The said Series "A" to bear date, April first, eighteen hundred and seventy-five, and the said several succeeding Series to bear such dates respec-

tively as the Board of Directors of said company may direct; all of said bonds aggregating the sum of forty-six millions of dollars; and

WHEREAS, the said Board of Directors, at the meeting aforesaid, and in the manner and form, and by the vote aforesaid, did further resolve, that the said Series "A" of said bonds should be executed and issued in substantially the following form, and that the succeeding series of said bonds should be in a similar form, with the necessary changes to conform to said resolutions or orders, which form is as follows, to-wit:

THE UNITED STATES OF AMERICA.

\$1,000 in United States

Gold Coin. In United States \$1,000
Gold Coin.Form of
Bond.

(Vignette.)

FIRST MORTGAGE BOND.

No.

Series "A."

Rate of
Interest

The Southern Pacific Railroad Company (of California,) for value received, promises to pay one thousand dollars to Mark Hopkins, or bearer, in the City of New York, thirty years from the date hereof, with interest thereon at the rate of six per centum per annum from said date, payable semi-annually on the first day of October next ensuing, and on the first day of April and October in each year thereafter, in the City of New York, on

presentation and surrender of the respective coupons hereunto annexed, both principal and interest payable in United States Gold Coin at par, dollar for dollar.

This bond is one of Series "A" of the first mortgage bonds issued, and to be issued by the said Southern Pacific Railroad Company in seven series, designated respectively by the letters of the alphabet, commencing with "A" and ending with "G," both inclusive. Series "A," consisting of thirteen thousand bonds for one thousand dollars each, numbered from one to thirteen thousand, both inclusive, and four thousand bonds for five hundred dollars each, numbered from thirteen thousand and one to seventeen thousand, both inclusive. Series "B" to "F," ~~both~~ inclusive, consisting each of five thousand bonds for one thousand dollars each, numbered from seventeen thousand and one to forty-two thousand, both inclusive, and Series "G," consisting of six thousand bonds for one thousand dollars each, numbered from forty-two thousand and one to forty-eight thousand, both inclusive. All of said bonds being payable thirty years after their respective date, with the interest at the rate of six per centum per annum, payable semi-annually.

Dates. The said series "A" to bear date April first, eighteen hundred and seventy-five, and the

said several succeeding series to bear such dates respectively as the Board of Directors of said Company may direct; all of said bonds aggregating the sum of forty-six millions of dollars.

No prefer-
ence by rea-
son of pri-
ority.

The holder of any of such bonds is to have no preference over any other holder of any of said bonds by reason of any priority in date or the time of issuing the same or otherwise.

All of said bonds are secured by a mortgage or deed of trust bearing even date with the bonds constituting Series "A," duly executed by said company to D. O. Mills and Lloyd Tevis, San Francisco, California, as Trustees, upon its railroad and telegraph lines in the State of California, running from the City of San Francisco in a southerly and southeastern direction by way of Carnadero Junction, Salinas Valley and Polonio Pass to the Colorado River at or near the "Needles"; also, from Carnadero Junction to San Benito; also, from Los Gatos Creek via Goshen to the junction with the first-mentioned line between Posa Creek and Kern River; also from the junction near Tehachapi Pass, via Los Angeles to the Texas Pacific Railroad, near Fort Yuma, and also from Los Angeles to Wilmington, on San Pedro Bay, aggregating eleven hundred and fifty miles of railroad and telegraph line, with all the rolling stock, stations, fixtures, and fran-

How se-
cured.

chises for the permanent use thereof, and the appurtenances thereto now owned or held, or that may be hereafter required by said company for the permanent use of said railroad and telegraph lines.

Includes
lands.

Also, upon all the lands granted to said company by the Congress of the United States, to aid it in the construction of said railroad and telegraph lines, not sold or otherwise disposed of prior to the execution of said mortgage, aggregating, as near as can be estimated, eleven millions of acres.

IN TESTIMONY WHEREOF, the Southern Pacific Railroad Company has caused its corporate seal to be hereunto affixed, and these presents to be signed by its President and Secretary, this first day of April, in the year of our Lord one thousand eight hundred and seventy-five.

.....President.

.....Secretary.

AND WHEREAS, the said Board of Directors, at the meeting aforesaid, and in the manner and form, and by the vote aforesaid, did further direct that to each of said bonds there should be attached sixty interest coupons, numbered respectively, from one to sixty, inclusive, substantially in the following form, to wit.

Form of
Coupons.

*.....

**\$30. SOUTHERN PACIFIC RAILROAD
COMPANY OF CALIFORNIA.**

Series A.

Coupon. Bond, No..... No.....
 THIRTY DOLLARS.

Interest due.....

Payable in the City of New York in
 United States Gold Coin.

Secretary.

*.....

with such changes in amount in the body, and in the coupon as shall be necessary to conform to the order of the Board of Directors aforesaid, in regard to the several amounts or sums which are payable in each class of bonds; and,

WHEREAS, by an Act of Congress of the United States of America, approved on the twenty-seventh day of July, A. D. eighteen hundred and sixty-six, entitled, "An Act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," there was granted to the said Southern Pacific Railroad Company, party of the first part, a large body of public lands of the United States, to-wit: Every alternate section of public lands, designated by odd numbers, to the amount of ten alternate sections per mile on each side of the railroad and telegraph line of said company, running from the Bay of San Fran-

U. S. Gov-
ernment
Land
Grant.

cisco to the southeasterly line of the State of California, being about six hundred and thirty-six miles, not sold, reserved, granted, or otherwise appropriated, and free from pre-emption, homestead, or other claims or rights at the time the line of said road is designated by a plat thereof, filed in the office of the Commissioner of the General Land Office, and such other alternate sections designated by odd numbers as aforesaid, and situated not more than ten miles beyond the limits of the said first alternate sections, which may be selected by said company in lieu of any of the sections first aforesaid which may have been sold, granted, reserved, pre-empted, occupied as homesteads, or otherwise disposed of, or to which other rights may have attached, as provided in the Act of Congress aforesaid for the purpose of aiding in the construction of the railroad and telegraph line of the said party of the first part; and

WHEREAS, by an Act of Congress of the United States of America, approved on the third day of March, eighteen hundred and seventy-one, entitled "An Act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road, and for other purposes, there was granted to the said

Act of Con-
gress au-
thorizing
the Com-
pany to con-
struct lines
to connect
with Texas Southern Pacific Railroad Company the authority to construct a line of railroad from a point near Tehachapi Pass by way of Los Angeles, to the Texas Pacific Railroad, at or

Pacific Rail-
road and
Atlantic
and Pacific
Railroad.

near the Colorado River, with the same rights, land grants and privileges, and subject to the same limitations, restrictions and conditions, as were granted to and imposed upon the said Southern Pacific Railroad Company of California, by the aforesaid Act of July twenty-seventh, eighteen hundred and sixty-six, before recited, subject to the rights, present and prospective, of the Atlantic and Pacific Railroad Company, which said last line of road is of the length of three hundred and fifty-six and seven-one-hundredths miles; and,

WHEREAS, the said Board of Directors, at the meeting aforesaid, and in the manner and form, and by the vote aforesaid, did further direct that, to secure the payment of said bonds, a first mortgage upon said road and its rolling stock, stations, fixtures, right of way and franchises, and the lands aforesaid

<sup>Mortgage to
be executed
to Trustees.</sup> granted by said Acts of Congress, not sold or otherwise disposed of, or contracted to be sold, as shown by the books of said company, should be executed under the corporate seal of said company, and be signed by its President and Secretary, to D. O. Mills and Lloyd Tevis, both of the City and County of San Francisco, State of California, as Trustees for the holders of said bonds: and

WHEREAS, Said Board of Directors, at the meeting aforesaid, and in the manner

Sinking
Fund,
\$100,000
yearly,
commen-
cing 1892.

Redemption
of bonds.

and form, and by the vote aforesaid, did further direct that a sinking fund should be created for the redemption and payment of said bonds, by setting apart the sum of one hundred thousand dollars of the net income of said road in the year eighteen hundred and eighty-two and each year thereafter until all of said bonds, principal and interest, shall have been redeemed or paid in trust, to be loaned out at interest, upon good securities, or otherwise invested under the order and direction of said Board of Directors, or used to redeem said bonds as often as one hundred thousand dollars shall come into the sinking fund, in which case notice shall be published in one paper in the City of San Francisco and two papers in New York City, that bonds will be redeemed at a price not exceeding their par value, and inviting bids for the surrender thereof at prices to be named, not exceeding the par value of said bonds; the lowest bids less than par to be accepted, and bonds redeemed to the extent of the money in the sinking fund.

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that the said Southern Pacific Railroad Company, for the better securing of the payment of the principal and interest of the said first mortgage bonds, and in consideration also of the sum of one dollar, to it in hand paid by the said parties of the second part, the receipt whereof is hereby ac-

Description
of
property
conveyed
to
Trust-
tees.

knowledged, has granted, bargained, sold, and aliened, conveyed and confirmed, and by these presents doth grant, bargain, sell, alien, convey and confirm unto the said parties of the second part, and to their successors duly appointed, for the execution of the trusts herein set forth, the following property now or hereafter constituted, purchased, acquired, held in possession and owned by said company, to-wit: the whole of the railroad and telegraph line of the said company, running from the City of San Francisco, in the State of California, in a southerly and southeasterly direction, by way of Carnadero Junction, Salinas Valley and Polonio Pass, to the Colorado River, at or near the "Needles;" also from Carnadero Junction to San Benito; also from Los Gatos Creek, via Goshen, to the junction with the first mentioned line, between Poso Creek and Kern River; also, from the junction near Tehachapi Pass, via Los Angeles, to the Texas Pacific Railroad near Fort Yuma, and also from Los Angeles to Wilmington, on San Pedro Bay, aggregating eleven hundred and fifty miles of railroad and telegraph line, including all the rights of way, roadway, track and tracks, together with all the superstructures, depots, depot grounds, station houses, watering places, workshops, machine shops, machinery, side tracks, turn-outs, turntables, weighing scales, locomotives, tenders, cars, rolling stock of all kinds, full

equipments, fixtures, tools and all other property which may be necessarily or ordinarily used in operating or repairing the said railroad, including all of the said property, which is now or may hereafter, in whole or in part, be constructed or completed, purchased, acquired, held, or owned by the said Company, pertaining to said railroad, and all the corporate rights, privileges and franchises of said Company, pertaining to said road, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging and appertaining, and the reversion and reversions, remainder and remainders, rents, incomes, issues and profits thereof, with all the rights, titles, interests, estate, property, succession, claim and demand, in law or equity, of the said party of the first part, of, in and to the same, or any part and parcel thereof; to have and to hold the above granted and described premises, property and franchises, with the appurtenances, unto the said parties of the second part, and to the survivor of them, and to their successors, duly appointed, upon trust and for the use and benefit of the person or persons, body or bodies, politic or corporate, who shall have become, or be from time to time, holders of the said "first mortgage bonds," or any of them. Provided, always, and these presents are upon the express condition that if the said party of the first part, or its successors,

shall well and truly pay, or cause or procure to be paid unto the holders, from time to time, of said bonds, and each and every one of them, the said sums of money secured to be paid by the said bonds, and the interest coupons attached thereto, at the places and times, and in the manner set forth in the said bonds, according to the true intent and meaning thereof, then these presents, and all the property, estate, right, franchises and privileges herein and hereby granted and conveyed, shall cease, determine and be void. But if default shall be made in the payment of the said sums of money specified in said bonds, or in the payment of said interest coupons, or either of them, or any part thereof, and if the same shall remain unpaid for the period of six months from and after the time when the same should have been paid, according to the terms of said bonds, then the said parties of the second part, or either of them, upon the refusal of the other, or their successors in said trust, by themselves, or their agents, or servants, in that behalf, may, upon request of the holder or holders of not less than one-fourth of said bonds, on which the interest or principal shall so be and have so remained in default, as aforesaid, enter into and upon and take possession of all, or in their or his discretion, any part of the said premises and property hereinbefore described, and work and operate

Proceedings in
event of
default in
payment.

the said railroad, and receive the income, receipts and profits thereof, and out of the same pay:

First—The expenses of running and operating the same, including therein such reasonable compensation as they or he may allow to the several persons employed or engaged in the running and superintendence of the same, and a reasonable compensation to the parties of the second part, or their successors, or such of them as shall act in the premises, for their or his care, diligence and responsibility in the premises.

Second—The expenses of keeping the said road, the appurtenances, the locomotives and the rolling stock thereof in good and sufficient repair, to prevent deterioration in the value thereof, and all other reasonable and proper charges and expenses of the care and management thereof; and,

Third—Pay as far as the same will suffice, all interest and principal, if any, which may be due on said bonds; and in case of any deficiency, to apply said receipts, after the payment of all said charges and expenses, to the payment thereof, ratably, without preference of any kind, or the said parties of the second part may in such case foreclose this mortgage, and sell and dispose of, according to law, all the rights, property, privileges, franchises, real and personal, with the appurtenances herein and hereby granted, or so much

thereof as may be necessary, and out of the money arising from such sale, pay:

First—The costs and charges, and expenses of the foreclosure and sale, including therein reasonable counsel fees for conducting said proceedings to be allowed and fixed by the Court, but not exceeding thirty thousand dollars.

Second—Any expenses, costs and charges of the execution of the trust previously incurred and remaining unpaid.

Third—A reasonable compensation to the Trustees, or one of them, who may act, for their or his care, trouble and service in completing the execution of his trust and the distribution of the proceeds of sale, to be fixed by the Court, but not exceeding twenty thousand dollars; and,

Fourth—to distribute the residue of said proceeds among the holders of said bonds, in proportion to their several interests until all have been paid in full, principal and accrued interests.

And the said party of the first part hereby covenants and agrees that if, at any time, any lands now used for depot or shop purposes, or right of way, or water, or any lands not now used, but which may be hereafter used for such purposes, shall, for any cause, cease to be needed or used by said party of the first part for such purposes, the said parties of the second part may sell the same at the

Proceeds
from sale of
Depot
Lands,
etc.,
not needed
for such
purpose,
may be
sold and
proceeds
applied to
redemption
of Bonds.

price to be agreed upon by the parties of the first and second parts, and apply the money realized from such sale or sales to the redemption of said bonds in the manner hereinafter provided in the case of money realized from the sale of lands granted by the United States to the said party of the first part.

And the said party of the first part hereby agrees and covenants to and with the said parties of the second part, and their successors in said trust, that it will pay all ordinary and extraordinary taxes, assessments, and other public burdens and charges which shall or may be imposed upon the property herein described and hereby mortgaged, and every part thereof, and the said parties of the second the part, survivor of them, or their successors in said trust, or any one or more of the holders of said bonds, may, in case of default of the said party of the first part in this behalf, pay and discharge the same, and any other lien or incumbrance upon said property which may in any way, either in law or equity, be or become in effect a charge or lien thereon, prior to these presents, or to which this mortgage may be subject or subordinate, and for all payments thus made the parties so making the same shall be allowed interest thereon at the rate of seven per centum per annum, and such payments, with the interest thereon, shall be and are hereby secured to

Company
to pay all
taxes, as-
sessments,
etc., or in
default
Trustees
may pay
and receive
7% interest
on such
payments.

them by these presents, and declared to be payable and collectable in the same sort of currensey or money wherein they shall have been paid, and the same shall be payable by said party of the first part to said parties of the second part, upon demand, in trust for the party or parties paying the same, and may be paid out of the proceeds of the sale of said property and franchises hereinbefore provided.

And the said party of the first part hereby further covenants and agrees to and with the said parties of the second part, and their successors in said trust, that they will at any and all times hereafter, upon the request of the said parties of the second part, execute,

Will exe-
cute any
further con-
veyances
required.

Compensa-
tion to
Trustees.

acknowledge and deliver to the said parties of the second part all and every such further, necessary, and reasonable conveyances and assurances of the said premises or any part thereof, as may by the parties of the second part, or the survivor of them, or his or their successors in the trust hereby created, be reasonably advised or required for more fully carrying into effect the objects of this conveyance, and the said parties of the second part, and their successors in said trust, shall be entitled to receive a just and proper compensation for all services rendered by them in the discharge of said trust, and the same shall be deemed to be secured hereby.

And it is hereby stipulated and agreed that the said parties of the second part, and

Agents of
Trustees.

their successors in said trust, shall not be responsible for the acts or omissions of any agent or agents employed by him or them, in any manner, in and about the execution of the trust hereby created when such agent or agents are selected with reasonable discretion; or with the approbation, or with the knowledge and without the express disapprobation of said party of the first part, nor shall either of the said parties of the second part be responsible for any act or omission of the other in the execution of said trust.

Convey-
ance of
Land to
Trustees.

AND, THEREFORE, THIS INDENTURE FURTHER WITNESSETH: That the said party of the first part, for the purpose of securing the payment of the sums of money mentioned in said bonds, and the interest thereon, and in consideration of the premises, and also for and in consideration of the sum of one dollar to the said party of the first part in hand paid by the parties of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, released, enfeoffed, conveyed and confirmed, and by these presents does grant, bargain, sell, release, enfeoff, convey and confirm unto the said parties of the second part, as Trustees, and to their successors and survivor, and their assigns forever.

All and singular, the said several sections of land so as aforesaid granted by said Acts of Congress; and also all the estate, right, title, interest, claim and demand whatsoever, at

Reserved
Lands.

law and in equity, of, in, or to the same, or any part or parcel thereof, which the said party of the first part now has, holds, owns, or is entitled to, or hereafter may or shall acquire, have, hold, own, or be or become entitled to by force or virtue of the said Acts of Congress; saving, excepting, and reserving all parts and parcels of said lands which have been sold or contracted to be sold or disposed of heretofore, or which are or shall be included in the right of way of the said railroads and telegraph lines of the said company, as defined and granted by the Acts of Congress aforesaid, or used for the construction or operation thereof, or for the track, yards, depot grounds, buildings or erections thereof.

TO HAVE AND TO HOLD, all and singular, the lands hereby granted or intended to be granted, and each and every part and parcel thereof, with the appurtenances thereunto belenging unto the said parties of the second part, and their successors and survivor, and their assigns forever, as Trustees, for the uses and purposes, and upon the trusts, terms, conditions and agreements in this indenture set forth and declared.

PROVIDED, always, and these presents are upon the express condition, that if the said party of the first part shall well and truly pay, or cause to be paid to the holders of said

Lands shall revert to bonds, and every of them, the principal sums and rest in of money therein mentioned according to the tenor thereof with the interest thereon, at the times and in the manner hereinbefore provided, according to the true intent and meaning of these presents, then and from thenceforth this indenture and the estate hereby granted shall cease and determine, and all the right, title and interest in any and all property hereby conveyed to the parties of the second part, not then disposed of under the powers hereby conferred, shall revert to and vest in the said party of the first part.

THIS INDENTURE FURTHER WITNESSETH, that these presents, and the said bonds are made, executed and delivered upon the trusts, terms, conditions and agreements following, that is to say: That all the lands herein above conveyed and mortgaged shall be under the sole and exclusive management and control of the said party of the first part, who shall have full power and authority to make contracts for the sale of the same at such price, on such credit or terms of payment, and such other conditions as shall be agreed on by the said parties of the first and second parts, and as shall seem to them best calculated to secure the payment in full of all the bonds issued as hereinbefore provided, until entry or foreclosure by the Trustees, as hereinafter provided. But no title to any tract of land, contracted to be sold by the said party of the first

Land to be
under the
control of
S. P. R. R.

Payments
to be made
to Trustees.

part, shall be given until the whole of the purchase money of said tract shall be paid to said parties of the second part, or their successors or survivor, in cash or in said bonds, or overdue coupons thereof. And for this purpose it is agreed that the said party of the first part and said Trustees shall cause all such lands, as they shall from time to time become subject to sale, to be carefully examined and surveyed, and shall affix to each tract or parcel such price as in their judgment shall be most judicious, having in view the interests of all parties; and said lands shall be and remain at all times thereafter open for sale to any person who may desire to purchase and pay therefor; the prices being, nevertheless, at all times subject to revision and alteration by the said parties, and the party of the first part may reserve from sale any lands necessary for depot grounds, or other purposes connected with the construction or operation of the said railroad or telegraph.

The purchaser of any such land shall be at liberty to pay for the same in the aforesaid bonds or overdue coupons at par; and when any tract or parcel of said lands shall have been purchased and paid for, either in bonds, coupons or cash, as hereinbefore provided, the same shall be conveyed by the said parties of the first and second parts to the purchaser, in fee simple, and shall by such conveyance be absolutely and forever released from any

Lands may
be paid for
in bonds
and over-
due
coupons.

and all lien or incumbrance, for or on account of said bonds, or any other debt or obligation of the said party of the first part.

Trustees
may con-
vey land
by power
of attorney.

PROVIDED, That for the sake of convenience in making said conveyances, the said Trustees shall have power to act by attorney, duly nominated and appointed by them, jointly, by letter of attorney, which shall be duly acknowledged and recorded in each and all of the counties in which said lands or any part thereof are situated; and all deeds made in their names by such attorney shall have the same force and effect as if made by them in person.

Residence
of such
attorney.

PROVIDED, further, that the attorney so appointed shall be a resident of the City of San Francisco, in the State of California, and shall reside within convenient reach of the party of the first part.

Trustees
to cancel
Bonds and
Coupons.

The said Trustees shall and will cancel and discharge each and every bond and the coupons thereon, and all overdue coupons, which they may receive in payment for land, or by purchase, by defacing the seal of the Corporation, perforating the signatures of the President and Secretary and drawing lines across each of the interest coupons, on receipt thereof; and all bonds and coupons received in payment for lands, as aforesaid, shall when so cancelled, be delivered to the said party of the first part.

Proceeds of sales of lands shall be applied to the purchase of Bonds.

The said Trustees shall apply the proceeds of the sales made by them of lands hereby conveyed, to the sole and exclusive purpose of the payment of the bonds provided for in, and issued in conformity to, the terms of this indenture.

How Bonds shall be purchased.

And for such purpose all such avails shall, from time to time, as the same are realized, be used in the purchase of such bonds in the market, to be cancelled, so long as purchases thereof can be made at par; and whenever such bonds cannot be purchased at that rate, said Trustees shall advertise for proposals to sell such bonds to them in two newspapers published in the City of New York, and one newspaper published in the City of San Francisco; and after receiving such proposals they shall have power to purchase such bonds at the lowest terms so offered.

The said party of the first part does hereby covenant and agree to pay to the holders of said bonds respectively, the said principal sums of money therein mentioned, and the interest thereof as aforesaid.

If any default shall be made in the payment either of principal or interest on any of said bonds for six months, after demand at the place of payment when the same shall become due, then the said Trustees may, on being requested by the holders of at least one hundred thousand dollars of such bonds, enter into and take possession of any of the

In event of default in payments for six

months,
Trustees
may fore-
close mort-
gage and
dispose of
lands at
public auc-
tion suffi-
cient to dis-
charge all
arrears.

lands above conveyed, and foreclose this mortgage, and may sell at public auction so much of said lands as may be necessary to discharge all arrears of such interest, and apply the proceeds, after deducting the costs, charges and expenses of such entry, foreclosure and sale, to the payment of such arrears of interest. If any such default shall continue for one year from the time of such demand and refusal, the principal sum of all bonds then outstanding shall become due and payable, and the said Trustees may enter into and take possession of all the lands above by these presents mortgaged or conveyed, foreclose this mortgage and sell at public auction all said lands, or so much thereof as may be necessary, first giving at least six months' previous notice of the time and place of sale in at least one newspaper published in the City of New York, and in one published in each of the Cities of San Francisco, Sacramento, Los Angeles and San Diego; and they shall apply the proceeds thereof, after deducting the costs, charges and expenses of such last-mentioned entry, foreclosure and sale, to the payment of all said bonds then outstanding, and the interest accrued thereon, rendering the surplus, if any there shall be, unto the said party of the first part. In case of any sale upon any such foreclosure, or at any such public auction, the said Trustees shall make, execute and

deliver a conveyance of the said lands so sold, which shall convey to the purchasers all the rights and privileges of the said party of the first part, in and to the property so sold, to the same extent as the same shall have been previously enjoyed and held by the said party of the first part.

If after any such entry shall be made or

*Foreclosure proceedings
for interest
to cease
if interest
is subsequently
paid.*

any such foreclosure proceedings shall be commenced for the satisfying of interest only, as above provided, and before the lands are sold thereon, the said party of the first part shall pay and discharge such interest and deliver the coupons therefor to the said Trustees, and pay all the costs, charges and expenses incurred in such entry and foreclosure and the proceedings thereon; and in every such case the said Trustees shall discontinue their proceedings thereon, and restore to the said party of the first part all of such lands to be held subject to the above conveyance and mortgage and subject to all the provisions, terms and conditions of these presents, in like manner as if such entry had not been made, nor such foreclosure proceedings commenced. In case a vacancy shall happen in the number of Trustees hereinbefore mentioned as parties of the second part in this indenture, or if one of them shall be temporarily absent, the remaining Trustee shall, while said vacancy or absence exists, have all the rights, exercise all the

powers and discharge all the duties devolving on the said Trustee by said instrument. But as soon as it conveniently may be done, such vacancy shall be filled by the nomination by

How vacan-
cy in Trus-
tees is to be
filled. the remaining Trustee of some proper person to fill such vacancy, which nomination shall

be submitted to the Board of Directors of said company, and if approved by them, the person so nominated and approved immediately shall become a Trustee under this instrument. If said nomination is not approved, another person shall be nominated by said remaining Trustee, and in like manner submitted for approval, and so on till three nominations shall have been made. But if three successive nominations shall be made and none of them shall be approved by said Board, said vacancy shall be filled by a Committee of three persons, selected, one by said remaining Trustee, one by said Board of Directors, and a third by the two thus selected, and the person appointed Trustee by a majority of the Committee shall be and remain a Trustee under this instrument. And the person regularly appointed a Trustee to fill a vacancy in either of the forms above specified, shall, from and after his said appointment, and his acceptance of the appointment become vested with the same estates, powers, rights and interests, and charged with the same duties and responsibilities as if he had been one of

the original Trustees, parties of the second part, named in and executing this instrument; and the prior remaining Trustee may and shall execute such conveyances and instruments as may be proper or necessary to vest the same in such new Trustee jointly with him, or to furnish evidence of such vesting. If at any time either of the said Trustees shall resign, his place as Trustee by a proper deed in writing to that effect, and such resignation shall be accepted by the said party of the first part, then, and in every such case, the place of such resigning Trustee thereupon shall become and be vacant.

Whenever all the bonds which shall have been made and issued by the said party of the first part under and in conformity to the provisions of this indenture, with the interest thereon, together with all the expenses incurred by the said Trustees in the execution of the trust herein and hereby created shall have been fully paid or satisfied, the said Trustees shall reconvey to the said party of the first part all and singular the said lands then in the hands of the said Trustees, and not before that time sold or disposed of, in the execution of the trust hereby created. In case the said Trustees shall at any time have any trust moneys on hand, received from the sale of the lands hereby conveyed which will not be required to meet any immediate liabilities

Reconveyance by
Trustees
upon payment
of Bonds and
Interest.

Deposit of surplus monies by Trustees. of the company, to which said moneys are by these presents devoted, the said moneys shall be loaned on interest, or deposited on interest with some bank or trust company in the City of San Francisco or Sacramento, subject to be drawn by checks signed by the Trustees or such one of them as they may designate. All of the books of the said company, and of the Trustees, relating to the lands hereby conveyed, shall be mutually open to the inspection of said company and said Trustees. It shall be the duty of the said Trustees to certify and deliver to the said party of the first part the said bonds, as the same from time to time shall be demanded, issued or used by the said party of the first part.

Responsibility of Trustees. And it is hereby mutually agreed by and between the parties hereto, that the said parties of the second part, and their survivor and successors, and their heirs, executors and administrators, shall not be answerable for the acts, omissions or defaults of each other, nor for anything short of their own gross negligence or wilful misfeasance..

Provisions of Acts of Congress to be observed. It is hereby declared by the parties to this indenture, that all the provisions of said Acts of Congress, so far as they are applicable, are hereby made, and shall be deemed and taken to be a part of this instrument; and the said provisions in all that concerns the sale and disposal of the said lands hereby conveyed to

the parties of the second part are to be observed, and strictly and faithfully carried out and fulfilled.

And the said party of the first part covenants and agrees to and with the said parties of the second part, that the said party of the first part shall and will, at any and at all times hereafter, and from time to time, execute, acknowledge and deliver under its corporate seal, to the said parties of the second part, and their survivors or successors, all such other or further assurances, deeds, mortgages, obligations, transfers, indentures and instruments in writing, and shall and will do and perform all such other or further acts or things, as shall or may be necessary or proper, or as their counsel, learned in the law, shall deem necessary, proper or expedient for the better or more effectually securing upon the above conveyed and mortgaged premises the payment of the said bonds so to be issued, and the interest due and to grow due thereon in manner aforesaid, or for carrying into effect the true intent, design, objects and purposes of these presents. And the said parties of the second part hereby accept the trust created and declared by this instrument; and agree to discharge the same pursuant to the provisions in that behalf herein contained.

Will execute further instruments if necessary to secure payments of Bonds.

IN WITNESS WHEREOF, the said Southern Pacific Railroad Company has caused these presents to be signed by the President and Secretary, and sealed with

its corporate seal, and the above parties of the second part have hereunto set their hands and seal, the day and year first above written.

CHARLES CROCKER,

President Southern Pacific Railroad
(Corporate Seal) Company.

S. P. R. R. Co.) J. L. WILLETT,

Secretary Southern Pacific Railroad
Company.

We accept the trust declared in the foregoing instrument.

D. O. MILLS, (Seal.) } Trustees.
LLOYD TEVIS, (Seal.) }

STATE OF CALIFORNIA, }
City and County of San Francisco, { ss.

On this third (3rd) day of July, in the year one thousand eight hundred and seventy-five (1875), before me, Charles J. Torbert, a Notary Public in and for the said City and County of San Francisco, State of California, duly commissioned and qualified, personally appeared Charles Crocker, known to me to be the President of the Southern Pacific Railroad Company, and J. L. Willcutt, known to me to be the Secretary of the Southern Pacific Railroad Company, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand
and affixed my official seal this 3rd day of July, A. D.
1875.

(Notarial seal.)

CHARLES J. TORBERT,

Notary Public in and for the City and County
of San Francisco, State of California.

STATE OF CALIFORNIA, }
City and County of San Francisco. } ss.

I, Charles J. Torbert, a Notary Public in and for the said City and County of San Francisco, State of California, residing in the City of San Francisco, duly commissioned and sworn, do certify that on the sixth (6th) day of July, in the year one thousand eight hundred and seventy-five (1875), personally appeared before me in the City and County of San Francisco, State of California aforesaid, Charles Crocker, President of the "Southern Pacific Railroad Company," and J. L. Willcutt, Secretary of the "Southern Pacific Railroad Company," who are both personally known to me to be the said officers of the said "Southern Pacific Railroad Company," respectively, and the individuals described in and who have executed the foregoing instrument as such officers of said company, and they each severally and personally, then and there, acknowledged to me that they executed the said instrument as the free act and deed of the said "Southern Pacific Railroad Company" freely and voluntarily, and for the uses and purposes therein mentioned; and the said J. L. Willcutt, with whom I am personally

acquainted, being by me duly sworn, did depose and say that he resides in the City and County of San Francisco, State of California; that he is and was Secretary of the "Southern Pacific Railroad Company" at the date and time he executed the foregoing instrument; that he knows the corporate seal of said company, and is, and was at the date of said instrument, the legal custodian of said seal; that the seal affixed to the foregoing instrument was and is such corporate seal, and was by him so affixed by order of the Board of Directors of the said "Southern Pacific Railroad Company;" that he signed his name thereto as Secretary of said company by the like order. And the said J. L. Willent further said that he was and is acquainted with Charles Crocker, and knows that said Charles Crocker is and was President of the "Southern Pacific Railroad Company" at the date of said instrument; that the signature of the said Charles Crocker subscribed to said instrument is in the genuine handwriting of the said Charles Crocker, and was thereto by him subscribed by the like order of the Board of Directors of said Company, and in the presence of him, the said deponent.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the City and County of San Francisco, State of California, the 6th day of July, A. D. 1875.

(Notarial Seal.) CHARLES J. TORBERT,

Notary Public in and for the City and County
of San Francisco, State of California.

STATE OF CALIFORNIA,
City and County of San Francisco. } ss.

On this seventh (7th) day of July, in the year one thousand eight hundred and seventy-five (1875), before me, Charles J. Torbert, a notary public in and for the said City and County of San Francisco, State of California, duly commissioned and qualified, personally appeared D. O. Mills and Lloyd Tevis, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the City and County of San Francisco, State of California, this 7th day of July, A. D. 1875.

(Notarial Seal.)

CHARLES J. TORBERT,

Notary Public

In and for the City and County of San Francisco, State of California.

Filed for record at the request of D. W. Parkhurst, and recorded in office of the County Recorder of San Mateo County, July 8th, 1875, at 5 p. m., in Liber 11 of Mortgages, at page 2 and following.

Witness my hand and seal of office.

(Seal.) GEO. H. RICE, County Recorder.

Paid, \$22.50. By W. R. Thomas, Deputy.

Filed for record at the request of D. W. Parkhurst, July 9th, A. D. 1875, at 9 o'clock and 26 minutes, A. M., and recorded in Book 15 of Mortgages, at page 156,

et seq., Records of the County of Santa Clara, in the State of California.

Witness my hand and seal of office.

(Seal.) W. J. COLAHAN, County Recorder.

Paid, \$15. By F. J. Saxe, Deputy.

Filed for record at the request of D. W. Parkhurst, July 9th, A. D. 1875, at 8 o'clock and 53 minutes, P. M., and recorded in Book 1 of Mortgages, at page 586 and following, Records of San Benito County, in the State of California.

Witness my hand and seal of office.

(Seal.) H. M. HAYES,

Fees \$15, paid. Co. Recorder.

Filed for record at the request of D. W. Parkhurst, July 10th, A. D. 1875, at 8 o'clock and 10 minutes, P. M., and recorded in Volume 17, page 529 and following pages of the Mortgage Records of the County of Santa Cruz, in the State of California.

Witness my hand and seal of said County Recorder.

(Seal.) H. E. MAKINNEY,

Paid \$15.00. County Recorder in and for Santa Cruz County.

Filed for record at the request of D. W. Parkhurst, July 12th, A. D. 1875, at 9 o'clock and 55 minutes, A. M., and recorded in Book 1 of Mortgages, page 183 and following, Records of the County of Monterey, in the State of California.

Witness my hand and seal of office.

(Seal.) HERBERT MILLS,

Fees, \$15; p'd. County Recorder.

Filed for record at the request of D. W. Parkhurst, July 13th, A. D. 1875, at six o'clock and 25 minutes, P. M., and recorded in Book "C" of Mortgages, page 540 et seq., Records of the County of San Luis Obispo, in the State of California.

Witness my hand and seal of office of County Recorder.

(Seal.)

Fees, \$15.

CHAS. W. DANA,

County Recorder.

Filed for record at the request of D. W. Parkhurst, July 14th, A. D. 1875, at 2 o'clock and 20 minutes P. M., and recorded in Book "F" of Mortgages, pages 164 and following, Records of the County of Santa Barbara, in the State of California.

Witness my hand and seal of office of County Recorder.

(Seal.)

Fees, \$15; p'd.

H. P. STONE, County Recorder.

By J. O. B. Wentling, Deputy.

Filed for record at the request of D. W. Parkhurst, July 16th, A. D. 1875, at 8 o'clock and 40 minutes A. M., and recorded in Book 15 of Mortgages, page 600 et seq., Records of the County of Los Angeles, in the State of California.

Witness my hand and seal of office of County Recorder.

(Seal.)

Fees, \$15; p'd.

J. W. GILLETTE, County Recorder.

By D. S. Lovejoy, Deputy.

Filed for record at the request of D. W. Parkhurst, July 19th, a. d. 1875, at nine o'clock and 15 minutes A. M., and recorded in Book Volume 2 of Mortgages, pages 217 and following, Records of the County of Kern, in the State of California.

Witness my hand and seal of office.

(Seal)

Fees \$15, p'd.

F. W. CRAIG,

County Recorder.

Filed for record at the request of D. W. Parkhurst, Esq., July 20th, a. d. 1875, at 8 o'clock and 15 minutes P. M., and recorded in Book D of Mortgages, pp. 310, et seq., Records of the County of Fresno, in the State of California.

Witness my hand and seal of office of County Recorder.

(Seal)

Pd. \$15.

A. M. CLARK, County Recorder.

By C. L. Wainwright, Deputy.

Filed for record at request of D. W. Parkhurst, July 21st, a. d. 1875, at 10 o'clock and 30 minutes A. M., and recorded in Book "K" of Mortgages, page 1, et seq., Records of the County of Tulare, in the State of California.

Witness my hand and seal of office of County Recorder.

(Seal)

Pd. \$15.

J. E. DENNY, Recorder.

By John G. Knox, Deputy.

Filed for record at the request of D. W. Parkhurst, July 23d, A. D. 1875, at 10 o'clock and 40 minutes P. M., and recorded in Book "D" of Mortgages, 544 et seq., Records of the County of San Bernardino, in the State of California.

Witness my hand and seal of office of County Recorder.

(Seal.) SYDNEY P. WAITE, County Recorder.

Pd. \$15.00. By R. S. Swing, Deputy.

Filed for record at the request of D. W. Parkhurst, July 26th, A. D. 1875, at 10 o'clock and 20 minutes A. M., and recorded in Book No. 7 of Mortgages, page 103 et seq., Records of the County of San Diego, State of California.

Witness my hand and seal of office of County Recorder.

(Seal.) A. S. GRANT, County Recorder.

Fees, \$15. By E. G. Haight, Deputy.

Filed for record at the request of D. W. Parkhurst, July 28th, A. D. 1875, at 24 minutes past 4 P. M., and recorded in Book No. 2 of Mortgages, pages 46 et seq., Records of the County of Ventura, State of California.

Witness my hand and seal of office of County Recorder.

(Seal.) JOHN T. STOW,

Fees, \$18. County Recorder.

Recorded at request of D. W. Parkhurst, August 3rd, A. D. 1875, at 1 P. M., in Liber 443 of Mortgages, page 309, in the office of the County Recorder of the City and County of San Francisco, State of California.

O. H. FRANK,
County Recorder.

Recorded at request of Wells, Fargo & Co., August 20, 1880, at 20 min. past 9 A. M., in Book 1 of Mortgages, page 557, et seq.. Records of Merced County.

(Seal.) E. J. HAMILTON, County Recorder.
\$15. By M. H. Walsh, Deputy.

Recorded at request of Wells, Fargo & Co., August 23d, A. D. 1880, at 5 min. past 9 o'clock A. M., in Vol. 15 of Mortgages, at pages 139 et seq., Records of Stanislaus County.

(Seal.) \$15, paid. JOHN McCoy, Recorder.

Recorded at request of J. L. Willcutt, September 6th, 1880, at 30 min. past 10 o'clock A. M., in Liber 624 of Mortgages, page 305, in the office of the County Recorder of the City and County of San Francisco, State of California.

(Seal.) W. K. DIETRICH, County Recorder.
Per Richard Blauvelt, Deputy.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER.

No. 91.

THIS INDENTURE, made this 25th day of August, 1888, between the Southern Pacific Railroad Company, a railroad corporation duly organized and existing under the laws of the United States and of the State of California, party of the first part, the Southern Pacific Company, a corporation organized and existing under the laws of the State of Kentucky, and lessee of portions of the Southern Pacific Railroad, party of the second part, and the Central Trust Company of New York, a corporation created, organized and existing under the laws of the State of New York, party of the third part; WITNESSETH:

THAT WHEREAS, the Southern Pacific Railroad Company as it existed prior to the consolidation and amalgamation hereinafter set out did, to secure the payment of its bonds in the sum of \$46,000,000, heretofore, to-wit: on the first day of April, 1875, make and execute its first mortgage on its entire line of railroad as then constituted, to-wit: on the whole of its railroad and telegraph line running from the City of San Francisco, in the State of California, in a southerly and southeasterly direction, by way of Carnadero Junction, Salinas Valley and Polonio Pass, to the Colorado River at or near the "Needles;" also from Carnadero Junction to San Benito; also from Los Gatos Creek via Goshen to the junction with the first mentioned line, between Poso Creek and Kern River; also from the junction near Tehachapi Pass via Los Angeles to the Texas Pacific Railroad, near Fort Yuma, and also from Los Angeles to

Wilmington, on San Pedro Bay, aggregating eleven hundred and fifty (1,150) miles of railroad and telegraph line, more or less, and on the several sections of land granted to said Southern Pacific Railroad Company by the Acts of Congress of July 27, 1866, and March 3, 1871, as stated in said mortgage, saving, excepting and reserving, however, all parts and parcels of said lands which had been sold or contracted to be sold or disposed of theretofore or which were or should be included in the rights of way of said railroads and telegraph lines of said company, as defined and granted by the Acts of Congress aforesaid, or used for the construction or operation thereof, or for the track, yards, depot grounds, buildings or erections thereof.

AND WHEREAS, subsequent thereto by instrument in writing, dated the fourth day of May, 1888, and pursuant to the laws of the State of California, in such cases made and provided, the San Jose and Almaden Railroad Company, the Pajaro and Santa Cruz Railroad Company, the Monterey Railroad Company, the Monterey Extension Railroad Company, the Southern Pacific Branch Railway Company, the San Pablo and Tulare Railroad Company, the San Pablo and Tulare Extension Railroad Company, the San Ramon Valley Railroad Company, the Stockton and Copperopolis Railroad Company, the Stockton and Tulare Railroad Company, the San Joaquin Valley and Yosemite Railroad Company, the Los Angeles and San Diego Railroad Company, the Los Angeles and Independence Railroad Company, the Long Beach, Whittier and Los Angeles County Railroad Company, the Long Beach

Railroad Company, the Southern Pacific Railroad Extension Company and the Ramona and San Bernardino Railroad Company (railroad corporations organized and existing under the laws of the State of California) amalgamated and consolidated their capital stocks, debts, properties, assets and franchises with the capital stock, debts, properties, assets and franchises of the Southern Pacific Railroad Company of California.

AND WHEREAS, by force and effect of said amalgamation and consolidation, the said party of the first part has succeeded to all of the debts, properties, assets and franchises of said several railroad companies, and now holds and owns the said several lines of railroad heretofore owned and held by them respectively, together with their respective properties, assets and franchises.

AND WHEREAS, the said Pajaro and Santa Cruz Railroad Company, to aid in the construction and completion of its line of railroad, did, prior to said amalgamation and consolidation, authorize the issuance of five hundred and thirty (530) of its thirty-year first mortgage bonds of one thousand dollars each, bearing date the first day of January, 1885, bearing interest at the rate of six per cent. per annum, payable semi-annually, secured by a mortgage or deed of trust, bearing date the first day of January, 1885, to S. T. Gage and E. B. Ryan, and covering its railroad, commencing at the town of Pajaro, in the County of Monterey, in the State of California, and extending thence to the City of Santa Cruz, in the County of Santa Cruz, in said State, with a branch line commencing at the town of

Aptos, in said County of Santa Cruz, and running thence in a northerly and northeasterly direction, following the meanders of Aptos Creek to the point of confluence of said creek with the creek running from White's Lagoon, a distance of twenty-six miles, as near as may be, together with all its corporate rights, its appurtenances, etc.

AND WHEREAS, the said Monterey Railroad Company, to aid in the construction and completion of its line of railroad, did, prior to said amalgamation and consolidation, authorize the issuance of two hundred and fifty (250) of its twenty-year first-mortgage bonds of one thousand dollars each, bearing date the first day of April, 1880, bearing interest at the rate of five per cent. per annum, payable semi-annually, secured by a mortgage or deed of trust, bearing date the ninth day of March, 1880, to Stephen T. Gage and E. B. Ryan, and covering the whole of the railroad line of said company, commencing at or near the town of Castroville, in the County of Monterey, in the State of California, and running through the County of Monterey, to a point at or near the City of Monterey in said county, a distance of fifteen and four-tenths (15.4) miles, together with all its corporate rights, its appurtenances, etc.

AND WHEREAS, the said Southern Pacific Branch Railway Company, to aid in the construction and completion of its line of railroad, did, prior to said amalgamation and consolidation, authorize the issuance of nine thousand of its fifty-year first-mortgage bonds of one thousand dollars each, bearing date the first day of April, 1887, bearing interest at the

rate of six per cent. per annum, payable semi-annually, secured by a mortgage or deed of trust, bearing date the twenty-fourth day of November, 1886, to William E. Brown and Gerrit L. Lansing, and covering the whole of the railroad line of the said company, commencing at a point near San Miguel, in the County of San Luis Obispo, in the State of California, there connecting with the railroad of the Southern Pacific Railroad Company, and running from thence in a general southeasterly direction through and into the Counties of San Luis Obispo, Santa Barbara, Ventura and Los Angeles, to a connection with the railroad of the Southern Pacific Railroad Company, near Newhall, in said Los Angeles County, a distance of about two hundred and fifty miles, as near as may be, together with all the corporate rights pertaining to said road, its appurtenances, etc.

AND WHEREAS, The said San Pablo and Tulare Railroad Company, to aid in the construction and completion of its line of railroad, did, prior to said amalgamation and consolidation, authorize the issuance of three thousand seven hundred and fifty (3,750) of its thirty-year first mortgage bonds of one thousand dollars each, bearing date the first day of April, 1878, bearing interest at the rate of six per cent. per annum, payable semi-annually, secured by mortgage or deed of trust, bearing date the second day of September, 1878, to Albert Gallatin and Charles Miller, and covering its line of railroad, constructed and unconstructed, running from a point at or near Martinez, in the County of Contra Costa, through the Counties of Contra Costa, San Joaquin, Stanislaus, Merced and Fresno to a point

at or near Los Gatos Creek, a distance of one hundred and fifty (150) miles, as near as may be, with all rolling stock, appurtenances, etc.

AND WHEREAS, The said Los Angeles and San Diego Railroad Company, to aid in the construction of its line of railroad, did, prior to said amalgamation and consolidation, authorize the issuance of two thousand eight hundred (2,800) of its thirty-year first mortgage bonds of one thousand dollars each, bearing date the first day of July, 1880, with interest at the rate of six per cent. per annum, payable semi-annually, secured by a mortgage or deed of trust bearing date the second day of December, 1880, to S. T. Gage and E. B. Ryan, and covering its railroad line constructed and unconstructed, from the City of Los Angeles, in a southerly direction, to the City of San Diego, in the southwestern part of the State of California, with all rolling stock, appurtenances, etc., a distance of 140 miles, as near as may be.

AND WHEREAS, There are now outstanding \$530,000 of said Pajaro and Santa Cruz Railroad Company's bonds; \$220,000 of said Monterey Railroad Company's bonds (the balance of \$30,000 having been redeemed, canceled and retired); \$3,145,000 of said Southern Pacific Branch Railway Company's bonds (the balance, \$5,855,000 being unissued and in the hands of the party of the first part); \$1,023,000 of said San Pablo and Tulare Railroad Company's bonds (the balance \$2,727,000, being unissued and in the hands of the party of the first part); and \$556,000 of the said Los Angeles and San Diego Railroad Company's bonds (the balance, \$2,244,000, being unissued and in the hands of the party of the first part.)

AND WHEREAS, Said mortgages and each of them are valid and subsisting liens upon the lines of railroad heretofore described, and now the property of the party of the first part.

AND WHEREAS, The owners of all the outstanding bonds heretofore issued as aforesaid by the Pajaro and Santa Cruz Railroad Company, the Monterey Railroad Company, the San Pablo and Tulare Railroad Company, and the Los Angeles and San Diego Railroad Company, are willing to surrender said bonds and permit the respective mortgages heretofore made to secure the payment thereof and hereinbefore described, to be satisfied of record and canceled, and receive in lieu thereof new fifty-year five per cent bonds secured by this mortgage.

AND WHEREAS, The party of the first part desires and intends to redeem and take up said mortgage bonds issued by said constituent companies, to-wit: The outstanding mortgage bonds of the Pajaro and Santa Cruz Railroad Company in the sum of \$530,000, the outstanding mortgage bonds of the Monterey Railroad Company in the sum of \$220,000, the outstanding mortgage bonds of the San Pablo and Tulare Railroad Company in the sum of \$1,023,000, and the outstanding mortgage bonds of the Los Angeles and San Diego Railroad Company in the sum of \$556,000, and retire the same, and to destroy, cancel and retire the unissued bonds of the San Pablo and Tulare Railroad Company in the sum of \$2,727,000, and the unissued bonds of the Los Angeles and San Diego Railroad Company in the sum of \$2,244,000, and cause said existing mortgages to be satisfied of record and

canceled; and as rapidly as the same can be done, upon terms satisfactory to the party of the first part to arrange for the redemption of the mortgage bonds, issued by said Southern Pacific Branch Railway Company, and when arrangements have been made for the redemption of all of such bonds to cause the same to be canceled, and the mortgage securing the same to be satisfied of record; and in lieu of said outstanding bonds, to issue new fifty-year five per cent. bonds secured by this mortgage, and said party of the first part desires and intends to pay off and discharge the floating debt incurred in the construction and completion of certain portions of its lines of railroad, and desires to complete the construction and equipment thereof, and to that end desires and intends to issue its bonds in an amount necessary to accomplish said objects and purposes, and to secure the payment thereof by mortgage upon certain of its constituent lines of railroad hereinafter more particularly described.

AND WHEREAS, heretofore, to-wit: on the 21st day of August, 1888, the Board of Directors of said Southern Pacific Railroad Company, at a meeting of said Board, at which all the members thereof were present, by a resolution to that effect, which was unanimously adopted, passed and concurred in, did determine and direct that bonds of said company be prepared, executed and issued in its name, and under its corporate seal, and signed by its President and Secretary, to bear date the first day of October, 1888, in the sum of one thousand dollars each, to the number of thirty-eight thousand, numbered from one to thirty-eight thousand inclusive, payable to the Central Trust Com-

pany of New York, or to the bearer thereof, fifty years after date, with interest at the rate of five per cent. per annum, payable semi-annually, on the first days of April and October of each year ensuing its date, payable both principal and interest in United States gold coin in the City of New York.

AND WHEREAS, The said Board of Directors, at the meeting aforesaid, and in the manner and form, and by the vote aforesaid, did further order and direct that said bonds should be drawn in substantially the following form, to-wit:

\$1,000. UNITED STATES OF AMERICA. \$1,000.
SOUTHERN PACIFIC RAILROAD COMPANY, (OF CALIFORNIA)

First Mortgage Five Per Cent Gold Bond.

The Southern Pacific Railroad Company (of California) acknowledges itself indebted to the Central Trust Company of New York, or to the bearer hereof, in the sum of one thousand dollars gold coin of the United States, which sum it promises to pay to the bearer hereof, or, if registered, to the registered holder hereof, fifty years after date, and it further promises that, on presentation and surrender at or after maturity of the respective interest coupons hereunto annexed, it will pay to the person presenting the same, or, if this bond is registered and the interest coupons appertaining thereto canceled, it will pay to the registered holder hereof, interest on such principal sum at the rate of five per cent. per annum, semi-annually, on or after the first day of April and October of each year ensuing the date hereof, both principal and interest payable at the office or agency of the company in the City of New York, in United States gold coin.

This is one of the first mortgage bonds issued under and secured by the indenture of mortgage or deed of trust from this company to the Central Trust Company of New York, Trustee, dated the twenty-fifth day of August, 1888.

None of said bonds are to be in anywise binding or obligatory unless authenticated by a certificate endorsed thereon, signed by said Trustee or its successor or successors in said trust.

This bond may at any time, upon production thereof to said Railroad Company, and proper endorsement being made thereon, and either with or without the surrender to said Railroad Company for cancellation of all unpaid interest coupons appertaining thereto, be registered upon the books of the company in the name of the holder thereof, and thereupon its transferability by delivery will cease, and thereafter it can be transferred only by the registered holder or his attorney by transfer duly made upon said books.

IN WITNESS WHEREOF, the said Southern Pacific Railroad Company has caused its corporate seal to be hereunto affixed, and this bond to be signed by its President and Secretary this first day of October, one thousand eight hundred and eighty-eight.

SOUTHERN PACIFIC RAILROAD COMPANY,

President.

Secretary.

AND WHEREAS, The said Board of Directors, at the meeting aforesaid, and in the manner and form and by the vote aforesaid, did further direct that to each of said bonds there should be attached one hundred interest coupons, numbered respectively from one to

one hundred, inclusive, substantially in the following form, to-wit:

\$25.	(Coupon.)	\$25.
SOUTHERN PACIFIC RAILROAD COMPANY (OF CALIFORNIA).		

First Mortgage Five Per Cent Gold Bond, No. ,
Interest coupon for Twenty-five Dollars, due .
payable in the City of New York, in United States
Gold Coin.

Coupon No. .

Treasurer.

And that all such coupons should bear the impression of the engraved signature of the Treasurer, which impression should be regarded and treated, in fact and in law, as equivalent to a manual signing by said officer.

AND WHEREAS, The said Board of Directors, at the meeting aforesaid, and in manner and form and by the vote aforesaid, did further direct that, to secure the payment of said bonds, a mortgage upon certain of its constituent lines of railroad and telegraph, and upon certain of its lands, should be executed in its name and under its corporate seal, and be signed by its President and Secretary, to the Central Trust Company of New York, as Trustee, for the holders of said bonds, said mortgage to cover the railroad and telegraph line, rolling stock, stations, fixtures and franchises held, owned and possessed by it in the following constituent lines of railroad, all lying within the State of California.

First—Running from Hillsdale to the town of New Almaden, all in Santa Clara county, being seven and eight-tenths (7.8) miles in length, more or less.

Second—Running from Pajaro in Monterey county to Santa Cruz in Santa Cruz county; also, running from Aptos in said Santa Cruz county, northerly and northeasterly about five miles, being twenty-six and two-tenths (26.2) miles in length, more or less.

Third—Running from a point at or near Castroville Station in Monterey county to a point at or near Monterey, in said county; thence northwesterly to a point at or near Pacific Grove Retreat; and thence southwesterly to a point near the mouth of the Carmel River, an estimated length of thirty-one and twelve hundredths (31.12) miles.

Fourth—Running from a point near San Miguel in San Luis Obispo county, in the State of California; there connecting with the railroad of the Southern Pacific Railroad Company; and running from thence in a general southeasterly direction through and into the Counties of San Luis Obispo, Santa Barbara, Ventura and Los Angeles, to a connection with the railroad of the Southern Pacific Railroad Company in said Los Angeles county near Newhall, being about two hundred and fifty (250) miles in length.

Fifth—Running from a point near Martinez in Contra Costa county to Tracy in San Joaquin county, a distance of forty-seven and fifty-eight hundredths (47.58) miles, more or less; running thence from Tracy through the Counties of San Joaquin, Stanislaus, Merced, Fresno and Tulare, to a connection with the San Joaquin Division of the railroad of the party of

the first part at or near Pampa, in the County of Kern, a distance of two hundred and sixty miles, more or less, and aggregating three hundred and seven and fifty-eight hundredths (307.58) miles, more or less.

Sixth—Running from a point at or near Avon in Contra Costa county to a point on the Central Pacific Railroad at or near Pleasanton, in the County of Alameda, a distance of thirty-five (35) miles, more or less.

Seventh—Running from a point at or near Oakdale in Stanislaus county, through and into the Counties of Stanislaus, Merced, Fresno and Tulare, to a point at or near the town of Poso, in Kern county, a distance of two hundred (200) miles, more or less, with branches connecting with the Central Pacific Railroad to or near Modesto in Stanislaus county, a distance of sixteen (16) miles, more or less, to or near Merced, in Merced county, a distance of ten (10) miles, more or less, to or near Sycamore, in Fresno county, a distance of ten (10) miles, more or less, to or near Fresno, in Fresno county, a distance of ten (10) miles, more or less, with a branch to or near Tulare, in Tulare county, there connecting with the San Joaquin Division of the railroad of the party of the first part, a distance of sixteen (16) miles, more or less; said line and branches being two hundred and sixty-two (262) miles in length, more or less.

Eighth—Running from Berenda Station in Fresno county to a point at or near Perry's Ranch in said county, a distance of twenty-five (25) miles, more or less.

Ninth—Running from a point at or near the City of Los Angeles, in the County of Los Angeles, to the

towns of Anaheim and Santa Ana, in said county; and thence through the Counties of Los Angeles and San Diego, to a point at or near the City of San Diego, in said last mentioned county, a distance of one hundred and forty (140) miles, more or less.

Tenth—Running from a point at or near the City of Los Angeles to Santa Monica, in Los Angeles county, a distance of eighteen and fifty hundredths (18.50) miles, more or less.

Eleventh—Running from a point at or near Long Beach, in Los Angeles county, to Whittier; thence to Ramona, a distance of thirty (30) miles, more or less; also, running from a point at or near Los Angeles to a point on the main line of the railroad of the party of the first part between El Monte and Puente, and thence northeasterly to a point on or near San Dimos Creek, a distance of thirty (30) miles, more or less, all in said County of Los Angeles, and aggregating sixty (60) miles in length, more or less.

Twelfth—Running from a point at or near Long Beach Junction, in Los Angeles county, to the town of Long Beach; thence easterly to the boundary line between the Ranchos Los Cerritos and Los Alamitos, in said county, a distance of four (4) miles, more or less.

Thirteenth—Running from a point on the line of the Wilmington Division of the railroad of the party of the first part, between the towns of Wilmington and San Pedro, in the County of Los Angeles, through said town of San Pedro to a point at or near Point Fermin; thence westerly through the lands of the San Pedro Harbor, Dock and Land Association to the

westerly boundary of said lands, all in the County of Los Angeles, and being five (5) miles in length, more or less.

Fourteenth—Running from a point at or near Ramona, in Los Angeles county, to a point at or near Crafton, in San Bernardino county, a distance of seventy-one (71) miles, more or less.

Fifteenth—Running from the City of San Francisco, in a southerly and southeasterly direction by way of Carnadero Junction, Salinas Valley and Polonio Pass to Mojave Junction; also from Carnadero Junction to San Benito; also from Los Gatos Creek, via Goshen, to the junction with the first-mentioned line between Poso Creek and Kern River; also from the junction near Tehachipi Pass, via Los Angeles, to Yuma, in the County of San Diego; and also from Los Angeles to Wilmington, on San Pedro Bay, aggregating nine hundred and eight miles of railroad and telegraph line, or thereabouts.

And also to cover the lands granted to the Southern Pacific Railroad Company by the Acts of Congress of July 27, 1866, and March 3, 1871, above referred to, not sold or contracted to be sold or disposed of prior to the execution of this mortgage, or included in the right of way of the railroads and telegraph lines of the said company, or used, or to be used for the construction or operation thereof, or for the track, yards, depot grounds, buildings or erections thereof.

AND WHEREAS, said Board of Directors at the meeting aforesaid and in the manner and form, and by the vote aforesaid, did further direct that a sinking fund should be created for the redemption and pay-

ment of said bonds by setting apart the sum of twenty thousand dollars of the net income derived by said company from the constituent lines of railroad herein mortgaged in the year 1898, and in each year thereafter, until all of said bonds, principal and interest, shall be redeemed or paid in trust, to be loaned out at interest upon good securities, or otherwise invested, under the order and direction of said Board of Directors, or used to redeem said bonds as often as twenty thousand dollars shall come into the sinking fund; in which case notice shall be published in one daily paper in the City of New York, and one daily paper in the City of San Francisco, for such length of time as the Board of Directors may order, that said bonds will be redeemed, and inviting bids for the surrender thereof at prices to be named, the lowest bids to be accepted, and bonds redeemed to the extent of the money in the sinking fund.

AND WHEREAS, the Southern Pacific Company, party of the second part herein, and lessee of certain portions of the railroads of the party of the first part affected by this mortgage, has been in writing notified and informed of this mortgage, and has, in writing, by order of its Board of Directors given its consent thereto, and as an evidence of such consent has become a party hereto.

NOW, THEREFORE, THIS INDENTURE WITNESSETH: That the said party of the first part, for the purpose of securing the payment of the sums of money mentioned in said bonds, and the interest thereon, and in consideration of the sum of one dollar to the said party of the first part, in hand paid by the party of the third part, the

receipt whereof is hereby acknowledged, has granted, bargained, sold, released, enfeoffed, conveyed and confirmed, and by these presents does grant, bargain, sell, release, enfeoff, convey and confirm unto the said party of the third part, as Trustee, and to its successors and assigns forever, the following property, now and hereafter constructed, purchased, acquired, held in possession and owned by said party of the first part, to-wit:

Its constituent lines of railroad lying within the State of California and running:

First—From Hillsdale to the town of New Almaden, all in Santa Clara county, being seven and eight-tenths (7.8) miles in length, more or less.

Second—From Pajaro in Monterey county to Santa Cruz, in Santa Cruz county; also, running from Aptos in said Santa Cruz county, northerly and northeasterly about five (5) miles; being twenty-six and two-tenths (26.2) miles in length, more or less.

Third—From a point at or near Castroville Station in Monterey county, to a point at or near Monterey in said county; thence northwesterly to a point at or near Pacific Grove Retreat, and thence southwesterly to a point near the mouth of Carmel River, an estimated length of thirty-one and twelve hundredths (31.12) miles.

Fourth—From a point near San Miguel, in San Luis Obispo County, in the State of California, there connecting with the railroad of the Southern Pacific Railroad Company, and running from thence in a general southeasterly direction through and into the Counties of San Luis Obispo, Santa Barbara, Ventura and Los Angeles,

to a connection with the railroad of the Southern Pacific Railroad Company in said Los Angeles county near Newhall, being about two hundred and fifty (250) miles in length.

Fifth—From a point at or near Martinez in Contra Costa county to Tracy in San Joaquin county, a distance of forty-seven and fifty-eight hundredths (47.58) miles, more or less; thence from Tracy through the Counties of San Joaquin, Stanislaus, Merced, Fresno and Tulare, to a connection with the San Joaquin Division of the railroad of the party of the first part, at or near Pampa, in the County of Kern, a distance of two hundred and sixty (260) miles, more or less, and aggregating three hundred and seven and fifty-eight hundredths (307.58) miles, more or less.

Sixth—From a point at or near Avon, in Contra Costa county, to a point on the Central Pacific Railroad at or near Pleasanton, in the County of Alameda, a distance of thirty-five miles, more or less.

Seventh—From a point at or near Oakdale in Stanislaus county through and into the counties of Stanislaus, Merced, Fresno and Tulare to a point at or near the town of Poso in Kern County, a distance of two hundred (200) miles more or less, with a branch connecting with the main line of the Central Pacific Railroad to or near Modesto in Stanislaus county a distance of sixteen (16) miles, more or less, a branch to or near Merced in Merced county, a distance of ten (10) miles, more or less, a branch to or near Sycamore in Fresno county, a distance of ten (10) miles, more or less, a branch to or near Fresno in Fresno county, a distance of ten (10) miles, more or

less, a branch to or near Tulare, in Tulare county, there connecting with the San Joaquin Division of the railroad of the party of the first part, a distance of sixteen (16) miles, more or less; said line and branches being two hundred and sixty-two (262) miles in length, more or less.

Eighth—From Berenda Station in Fresno county to a point at or near Perry's Ranch in said county, a distance of twenty-five (25) miles, more or less.

Ninth—From a point at or near the City of Los Angeles, in the County of Los Angeles, to the towns of Anaheim and Santa Ana in said county, and thence through the Counties of Los Angeles and San Diego to a point at or near the City of San Diego, in said last mentioned county, a distance of one hundred and forty (140) miles, more or less.

Tenth—From a point at or near the City of Los Angeles to Santa Monica in Los Angeles county, a distance of eighteen and fifty hundredths (18.50) miles, more or less.

Eleventh—From a point at or near Long Beach in Los Angeles county to Whittier, thence to Ramona, a distance of thirty (30) miles, more or less; also running from a point at or near Los Angeles to a point on the main line of the railroad of the party of the first part between El Monte and Puente, and thence northeasterly to a point on or near San Dimos Creek, a distance of thirty (30) miles, more or less, all in said County of Los Angeles, and aggregating sixty (60) miles in length, more or less.

Twelfth—From a point at or near Long Beach Junction in Los Angeles county to the town of Long

Beach; thence easterly to the boundary line between the Ranchos Los Cerritos and Los Alamitos in said county, a distance of four (4) miles, more or less.

Thirteenth—From a point on the line of the Wilmington Division of the railroad of the party of the first part between the towns of Wilmington and San Pedro, in the County of Los Angeles, through said town of San Pedro to a point at or near Point Fermin, thence westerly through the lands of the San Pedro Harbor, Dock and Land Association to the westerly boundary of said lands, all in the County of Los Angeles, and being five (5) miles in length, more or less.

Fourteenth—From a point at or near Ramona in Los Angeles county to a point at or near Crafton in San Bernardino county, a distance of seventy-one (71) miles more or less.

Fifteenth—From the City of San Francisco in a southerly and southeasterly direction by way of Carnadero Junction, Salinas Valley and Polonio Pass to Mojave Junction; also from Carnadero Junction to San Benito; also from Los Gatos Creek via Goshen to the junction with the first mentioned line between Poso Creek and Kern River; also from the junction near Tehachapi Pass via Los Angeles to Yuma, in the County of San Diego; also from Los Angeles to Wilmington on San Pedro Bay, aggregating nine hundred and eight (908) miles of railroad and telegraph line or thereabouts.

Including all the rights of way, roadway, track and tracks, together with all the superstructures, depots, depot grounds, station houses, watering places, side tracks, turnouts, turntables, weighing scales, locomo-

tives, tenders, cars, rolling stock of all kinds, equipments, fixtures, tools, telegraph lines and all other property which may now or hereafter be acquired for the purpose of operating the constituent lines of railroad hereby mortgaged, including all of the said property which now is or may hereafter, in whole or in part, be constructed or completed, purchased, acquired, held or owned by the said company pertaining to that portion of the said lines of railroad hereby mortgaged, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging and appertaining, and the reversion and reversions, remainder and remainders, rents, incomes, issues and profits thereof, with all the rights, titles, interest, estate, property, succession, claim and demand, in law or equity, of the said party of the first part of, in and to the same or any part or parcel thereof.

Also, all and singular the several sections of land so as aforesaid granted by said Acts of Congress, and also all the estate, right, title, interest, claim and demand whatsoever, at law or in equity, of, in or to the same, or any part or parcel thereof, which said party of the first part now has, holds, owns or is entitled to or hereafter may or shall acquire, have, own, or be or become entitled to, by force of virtue of the said Acts of Congress, saving, excepting and reserving all parts and parcels of said lands which have been sold or contracted to be sold or disposed of heretofore, or which are or shall be included in the right of way of the railroads and telegraph lines of the said company, as defined and granted by the Acts of Congress aforesaid, or used for the construction and

operation thereof, or for the track, yards, depot grounds, buildings or erections thereof.

To HAVE AND TO HOLD the above granted and described premises, property and franchises, with the appurtenances, unto the said party of the third part, and to its successors duly appointed, upon trust and for the use and benefit of the person or persons, body or bodies, politic or corporate, who shall have become or be from time to time holders of the said first mortgage bonds secured hereby, or any of them.

PROVIDED, ALWAYS, and these presents are upon the express condition that if the said party of the first part, or its successors, shall well and truly pay or cause or procure to be paid unto the holders, from time to time, of said bonds, and each and every one of them, the said sums of money secured to be paid by the said bonds, and the interest coupons attached thereto, at the places and times, and in the manner set forth in the bonds, according to the true intent and meaning thereof, then these presents, and the property, estate, rights, franchises and privileges herein and hereby granted and conveyed shall cease, determine and be void.

Until default shall be made by the said party of the first part, its successors and assigns, in the payment of the principal or interest of the said bonds or some of them, or some part thereof, as hereinafter provided, the said party of the first part, its successors and assigns, shall be suffered and permitted to possess and enjoy the said premises, with their appurtenances and all and singular the rights and franchises hereinbefore

described, and to receive, take and use the tolls, income, earnings and profits thereof, and the Trustee or Trustees hereunder shall have full power in its or their discretion, upon written request of the party of the first part, its successors or assigns, to convey, by way of release or otherwise, and fully release from the lien of this mortgage, any lands or other property of any description (except only the lands granted by Acts of Congress, as hereinbefore prescribed), which in its or their judgment shall not be necessary for or for use in connection with the said railroads, and to consent to such changes in the location of tracks, depots and other buildings as in its or their judgment may be expedient, and to make and deliver the releases and conveyances necessary to carry the same into effect, but any lands or other property which may be acquired for permanent use in substitution for any so released or conveyed, shall thereupon become subject to the lien of this mortgage, and upon request of the Trustee or Trustees hereunder, shall be conveyed to it or them by the party of the first part, its successors or assigns, upon the trusts of these presents.

But if default shall be made in the payment of the said sums of money specified in said bonds, or in the payment of said interest coupons, or either of them, or any part thereof, and if the same shall remain unpaid for the period of six months from and after the time when the same should have been paid according to the terms of said bonds, then the said party of the third part, or its successor in said trust, by itself or its agents or servants, in that behalf, may, upon request of the holder or holders of not less

than one-fourth of said bonds then outstanding, on which the interest or principal shall be and have so remained in default as aforesaid, enter into and upon and take possession of all, or in its or their discretion, any part of, the said constituent lines of railroad hereby mortgaged, and work and operate the said constituent lines of railroad, and receive the income, receipts and profits thereof and out of the same pay:

FIRST.

The expense of running and operating the same, including therein reasonable counsel fees and such reasonable compensation as it may allow to the several persons employed or engaged in the running and superintendence of the same.

SECOND.

The expense of keeping the said roads, the appurtenances, the locomotives and the rolling stock thereof in good and sufficient repair to prevent the deterioration in the value thereof, and all other reasonable and proper charges and expenses of the care and management thereof; and

THIRD.

Pay, as far as the same will suffice, all interest and principal, if any, which may be due on said bonds, and in case of any deficiency apply the said receipts, after the payment of all said charges and expenses to the payment thereof, ratably, without preference of any kind.

Or the said party of the third part may, in case of default as aforesaid, and upon request as aforesaid,

foreclose this mortgage and sell and dispose of, according to law, all of the constituent lines of railroad hereby mortgaged, together with all of the rights, property, privileges, franchises, real and personal, connected therewith or pertaining thereto that are subject to this mortgage, with the appurtenances herein and hereby granted, or so much as may be necessary, and out of the money arising from such sale, pay:

FIRST.

The cost and charges and expenses of the foreclosure and sale.

SECOND.

Any expenses, costs and charges of the execution of the trust previously incurred and remaining unpaid; and

THIRD.

Distribute the residue of said proceeds among the holders of said bonds and coupons in proportion to their several interests until all have been paid in full, principal and accrued interest.

If any default shall be made in the payment of interest on any of said bonds for six months, after demand at the place of payment, when the same shall become due, then the said Trustee may, on being requested by the holders of at least one hundred thousand dollars of such bonds, enter into and take possession of any of the lands above conveyed, and foreclose this mortgage thereon, and may sell at public auction upon like notice, as hereinafter prescribed, so much of said lands as may be necessary to discharge all arrears of such interest, and apply the proceeds, after deduct-

ing the costs, charges and expenses of such entry, foreclosure and sale, to the payment of such arrears of interest. If any such default shall continue for one year from the time of such demand and refusal, the principal sum of all bonds then outstanding shall become due and payable, and thereupon or upon default in the payment of the principal of such bonds at their maturity, the said Trustee may enter into and take possession of all the lands above by these presents mortgaged or conveyed, foreclose this mortgage thereon, and sell at public auction all said lands, or so much thereof as may be necessary, first giving at least six months previous notice of the time and place of sale in at least one newspaper published in the City of New York, and in one published in each of the Cities of San Francisco, Sacramento, Los Angeles and San Diego, and they shall apply the proceeds thereof, after deducting the costs, charges and expenses of such last mentioned entry, foreclosure and sale, to the payment of all said bonds then outstanding, and the interest accrued thereon, rendering the surplus, if any there shall be, unto the said party of the first part.

In case of any sale upon any such foreclosure or at any such public auction, the said Trustee shall make, execute, and deliver a conveyance of the said lands so sold, which shall convey to the purchasers all the rights and privileges of the said party of the first part, in and to the property so sold, to the same extent as the same shall have been previously enjoyed and held by the party of the first part.

If after any such entry shall be made or any foreclosure proceeding shall be commenced, for the satis-

fying of interest only, as above provided, and before the lands are sold thereon, the said party of the first part shall pay and discharge such interest and deliver the coupons therefor to the said Trustee, and pay all the costs, charges and expenses incurred in such entry and foreclosure, and the proceedings thereon; then and in every such case the said Trustee shall discontinue its proceedings thereon, and restore to said party of the first part all of such lands to be held subject to the above conveyance and mortgage, and subject to all the provisions, terms and conditions of the presents, in like manner as if such entry had not been made, nor such foreclosure proceedings commenced.

All lands granted or conveyed under the Acts of Congress hereinbefore referred to, and in anywise covered or affected by the provisions hereof shall be subject to the express provision that if and so long as the bonds issued under and secured by the said indenture or mortgage to D. O. Mills and Lloyd Tevis, dated April 1, 1875, or any thereof, shall remain outstanding, any and all sales made in the manner in said last mentioned indenture of mortgage prescribed, shall absolutely and forever release the said lands from any and all lien or encumbrance of, under or in respect of this mortgage or the bonds issued thereunder; and if and when all the bonds issued under said indenture of mortgage of April 1, 1875, shall have been fully satisfied and discharged, and the lien of such last-mentioned indenture of mortgage upon such lands fully released, then the said lands so far as they remain unsold at that time shall be subject to the like provisions in respect to sale and con-

veyance and release from the lien of this mortgage as are in said mortgage of April 1, 1875, prescribed in respect to sale, and conveyance, and release from the lien thereof.

THIS INDENTURE FURTHER WITNESSETH: That said party of the first part hereby agrees and covenants to and with said party of the third part that it will create a sinking fund for the redemption and payment of said bonds, by setting apart the sum of twenty thousand dollars of the net income derived by it from the constituent lines of railroad herein mortgaged, in the year 1898, and in each year thereafter, until all of said bonds, principal and interest, shall be redeemed or paid, in trust, to be loaned out at interest upon good securities, or otherwise invested under the order and direction of the Board of Directors of the party of the first part, or used to redeem said bonds as often as twenty thousand dollars shall come into the sinking fund, in which case notice shall be published in one daily paper in the City of New York and one daily paper in the City of San Francisco for such length of time as said Board of Directors may order that said bonds will be redeemed, and inviting bids for the surrender thereof, at prices to be named, the lowest bids to be accepted, and bonds redeemed to the extent of the money in the sinking fund.

AND THIS INDENTURE FURTHER WITNESSETH: That the said party of the first part hereby agrees and covenants to and with the said party of the third part, and its successors in said trust, that it will pay all ordinary and extraordinary taxes, assessments and other public burdens and charges which shall or may be legally

imposed upon the property herein described and hereby mortgaged, and every part thereof, and the said party of the third part, or its successors in said trust, or any one or more of the holders of said bonds, may in case of default of the said party of the first part in this behalf, pay and discharge the same, and any other lien or incumbrance upon said property which may in any way, either in law or equity, be or become in effect a charge or lien thereon prior to these presents, or to which this mortgage may be subject or subordinate, and for all payments thus made, the parties so making the same shall be allowed interest thereon, at the rate of six per cent. per annum, and such payments, with the interest thereon, shall be and are hereby secured to them by these presents, and declared to be payable and collectable in the same sort of currency or money wherein they shall have been paid, and the same shall be payable by said party of the first part to said party of the third part, upon demand, in trust for the party or parties paying the same, and may be paid out of the proceeds of the sale of said property and franchises hereinbefore provided.

AND THIS INDENTURE FURTHER WITNESSETH, That the said party of the first part further covenants and agrees to and with the said party of the third part, and its successors in said trust, that it will at any and all times hereafter upon the request of the said party of the third part, execute, acknowledge, and deliver to the said party of the third part and its successors in said trust, all and every such further necessary and reasonable conveyances

and assurances of the said premises, or any part thereof, as may by the party of the third part or its successors in the trust hereby created, be reasonably advised or required for more fully carrying into effect the objects of this conveyance.

And the said party of the third part and its successors in said trust shall be entitled to receive a just and proper compensation for all services rendered by it or them in the discharge of said trust, and the same shall be deemed to be secured hereby. And it is hereby stipulated and agreed that the said party of the third part and its successors in said trust shall not be responsible for the acts or omissions of any agent or agents employed by it or them in any manner in and about the execution of the trust hereby created when such agent or agents are selected with reasonable discretion, or with the approbation or with the knowledge and without the express disapprobation of said party of the first part.

THIS INDENTURE FURTHER WITNESSETH, That should the said party of the third part for any reason fail, refuse or become incompetent to discharge the duties or trusts herein conveyed to, imposed on and accepted by it, then and in that event the Board of Directors of the party of the first part shall nominate and appoint a successor or successors to said party of the third part, which said successor or successors shall be vested with the same properties and clothed with the same powers, rights and duties, and be subject to the same obligations as the said party of the third part named herein, as fully as though he, they or it had been named herein as such Trustee or Trustees.

AND THIS INDENTURE FURTHER WITNESSETH, That the party of the first part hereby agrees to take up, pay off, discharge and retire the outstanding bonds of the Pajaro and Santa Cruz Railroad Company in the sum of five hundred and thirty thousand dollars (\$530,000); the outstanding bonds of the Monterey Railroad Company, in the sum of two hundred and twenty thousand dollars (\$220,000); the outstanding bonds of the San Pablo and Tulare Railroad Company, in the sum of one million and twenty three thousand (\$1,023,000) dollars; and the outstanding bonds of the Los Angeles and San Diego Railroad Company, in the sum of five hundred and fifty-six thousand (\$556,000) dollars, and to destroy, cancel and retire all of said bonds unissued and in its hands, and cause said existing mortgages to be satisfied of record and canceled, and to take up said outstanding bonds with the new fifty-year five per cent bonds to be issued under this mortgage, upon such terms as may be agreed upon, said redemption and cancellation and satisfaction to be made without unnecessary delay.

IT IS FURTHER PROVIDED, COVENANTED, DECLARED AND AGREED, That the party of the third part and its successors in the trust hereby created is and are from time to time to authenticate and certify as issued hereunder and deliver to the party of the first part, its successors or assigns, first mortgage bonds in the form, or substantially the form, above prescribed, to amounts which shall aggregate, but shall not exceed twenty-two thousand five hundred dollars par value of such bonds per mile for each mile of road constructed or acquired by the said party of

the first part, its successors or assigns, and described in the foregoing thirteen subdivisions hereof designated from "First" to "Third," both inclusive, and from "Fifth" to "Fourteenth," both inclusive, and for twenty-five miles in addition thereto; and to further amounts not exceeding seven thousand five hundred dollars per mile additional thereto for expenses and disbursements incurred in and about double tracking, masonry, iron bridges, rolling stock or other betterments or improvements either to the permanent way, local or terminal facilities or rolling stock. The said party of the third part, and its successors in the trust hereby created, is and are also from time to time to authenticate and certify as issued hereunder, and deliver to the party of the first part, its successors and assigns, additional first mortgage bonds in the form or substantially the form above prescribed to the amounts to which bonds of the Southern Pacific Branch Railway Company issued, or to be issued under and secured by the mortgage of November 24, 1886, hereinbefore referred to, shall have been deposited with the Trustee hereunder.

All bonds so deposited with the Trustee hereunder shall be held as collateral security for the bonds issued under this mortgage until all of the bonds issued under and secured by such mortgage of the Southern Pacific Branch Railway Company shall have been so deposited, whereupon such deposited bonds shall be canceled and the mortgage securing the same shall be satisfied of record. While such Southern Pacific Branch Railway Company's bonds remain so on deposit with the Trustee, neither such

bonds nor the coupons appertaining thereto shall be required to be paid unless proceedings shall be taken for the foreclosure of the mortgage securing the same, in which case all the bonds and coupons which shall have been so deposited with the Trustee shall be entitled to share, for the benefit of the bonds issued under this mortgage, on equal terms with the other bonds issued under and secured by said Southern Pacific Branch Railway Company mortgage.

When said Southern Pacific Branch Railway Company mortgage shall have been satisfied of record, the party of the first part, its successors and assigns, shall be entitled from time to time to receive from the Trustee hereunder, duly authenticated, as issued under and secured by this mortgage, bonds in respect of the line described in the foregoing subdivision "Fourth" hereof, on the mileage basis of \$22,500 and \$7,500 as above prescribed in respect of the lines described in subdivisions "First" to "Third," both inclusive, and from "Fifth" to "Fourteenth," both inclusive, due allowance being made on the basis of \$30,000 per mile for the bonds theretofore issued against deposit of said Southern Pacific Branch Line bonds.

Authenticating certificates to such bonds are to be signed, and deliveries thereof to be made by the Trustee under this mortgage from time to time upon presentation to it of certificates, in writing, executed by the President and Chief Engineer of the party of the first part, or its successors, reciting the facts authorizing delivery of such bonds hereunder and without other evidence or proof of such facts. Provided, however, that notwithstanding any-

thing herein contained, the party of the first part or its successors, may at any time or from time to time require the party of the third part or its successors, to authenticate and certify hereunder and deliver to said party of the first part, its successors or assigns, and permit the sale of such amount or amounts of such bonds as the party of the first part, or its successors, may think fit; provided, that the proceeds of any such bonds issued in excess of the limits hereinabove prescribed shall be received by the Trustee or Trustees hereunder and not by the party of the first part or its successors or appointees, and shall be disbursed by said Trustee or Trustees to the party of the first part, or its successors or appointees, only pro rata as and when the party of the first part or its successors would have been entitled to receive such bonds under the foregoing provisions hereof; and, provided further, that the total amount of bonds issued under or secured by this deed of trust is not in any event to exceed for all purposes herein mentioned the aggregate sum of thirty-eight million dollars.

IN WITNESS WHEREOF, the said Southern Pacific Railroad Company, the party of the first part, has caused these presents to be signed in its name by its President and attested by its Secretary, and sealed with its corporate seal.

SOUTHERN PACIFIC RAILROAD COMPANY,

By Chas. F. Crocker, President.

Attest:

J. L. WILLCUTT,

(Seal.) Secretary.

The Southern Pacific Company, party of the second part, the lessee of portions of the said Southern Pacific Railroad affected by the foregoing instrument, does hereby consent thereto, and hereby waives any and all objection it might or could have to the execution thereof, or to the issuance of the bonds therein provided for, provided that nothing in this consent or assent contained shall be construed as a grant of any of the property rights of said Southern Pacific Company, or of its franchises, to the Mortgagee or Trustee named herein.

IN TESTIMONY WHEREOF, said Southern Pacific Company has caused these presents to be signed in its name by its Third Vice-President and attested by its Secretary, and its corporate seal to be hereunto affixed this 25th day of August, 1888.

SOUTHERN PACIFIC COMPANY.

By Chas. F. Crocker, Third Vice-President.

Attest:

G. L. LANSING,

(Seal.) Secretary.

The Central Trust Company of New York, party of the third part to the foregoing mortgage or deed of trust, hereby accepts the trust created and declared in and by the foregoing instrument, and agrees to discharge the same, pursuant to the provisions in that behalf therein contained.

IN TESTIMONY WHEREOF, said Central Trust Company of New York has caused these presents to be signed in its name by its Second Vice-President and

attested by its Assistant Secretary, and its corporate seal to be hereunto affixed, this seventh day of September, 1888.

CENTRAL TRUST COMPANY OF NEW YORK.

By E. Francis Hyde, Second Vice-President.

Attest:

B. G. MITCHELL,

(Seal.) Asst. Secretary.

STATE OF CALIFORNIA, } ss.
City and County of San Francisco, }

I, J. F. Kingwell, a Notary Public in and for the City and County of San Francisco, State of California, residing in said city and county, duly commissioned and sworn, do certify that on the 25th day of August, A. D. 1888, personally appeared before me in said city and county, Charles F. Crocker, President of the Southern Pacific Railroad Company, and J. L. Willcutt, Secretary of the Southern Pacific Railroad Company, who are both personally known to me to be the said officers of the said Southern Pacific Railroad Company respectively, and the individuals described in and who have executed the foregoing instrument as such officers of said company, and they each severally and personally then and there acknowledge to me that they executed the said instrument as the free act and deed of the said Southern Pacific Railroad Company freely and voluntarily, and for the uses and purposes therein mentioned, and the said J. L. Willcutt, with whom I am personally acquainted, being duly

sworn, did depose and say: That he resides in the City of Oakland, County of Alameda, State of California, that he is and was the Secretary of the Southern Pacific Railroad Company at the date and time he executed the foregoing instrument; that he knows the corporate seal of said company, and is and was at the date of execution of said instrument the legal custodian of said seal; that the seal affixed to the foregoing instrument, was and is such corporate seal, and was by him so affixed by order of the Board of Directors of said Southern Pacific Railroad Company; that he signed his name thereto as Secretary of said company by the like order. And the said J. L. Willeutt further said that he was acquainted with Charles F. Crocker, and knows that said Charles F. Crocker is and was President of the Southern Pacific Railroad Company at the date and execution of said instrument; that the signature of the said Charles F. Crocker subscribed to said instrument is in the genuine handwriting of the said Charles F. Crocker, and was thereto by him subscribed by the like order of the Board of Directors of said company, and in the presence of him, the said deponent.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(Seal.)

J. F. KINGWELL,

Notary Public in and for the City and County
of San Francisco, California.

STATE OF CALIFORNIA,
City and County of San Francisco. } ss.

On this twenty-fifth (25) day of August, in the year one thousand eight hundred and eighty-eight (1888), before me, J. F. Kingwell, a Notary Public in and for the said City and County of San Francisco, State of California, duly commissioned and qualified, personally appeared Chas. F. Crocker, known to me to be the 3rd Vice-President of the Southern Pacific Company, and G. L. Lansing, known to me to be the Secretary of the Southern Pacific Company, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand
and affixed my official seal, this 25th day of August,
A. D. 1888.

Seal.) J. F. KINGWELL, .

Notary Public in and for the City and County
of San Francisco, State of California.

STATE OF NEW YORK, }
City and County of New York. } ss.

On this 7th day of September, in the year 1888, before me, Charles Edgar Mills, a Commissioner of the State of California, in and for the State of New York, residing in said City of New York, personally appeared E. Francis Hyde and Benjamin G. Mitchell, known to me to be the Second Vice-President and Assistant Secretary of the corporation that executed the within

instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 7th day of September, A. D. 1888.

(Seal)

CHARLES EDGAR MILLS,
Commissioner for California in New York, 115
and 117 Broadway, N. Y. City.

[Endorsed]: Southern Pacific Railroad Company, of the first part, Southern Pacific Company, of the second part, and Central Trust Company of New York of the third part. Deed of Trust. Dated August 25, 1888.

Recorded at the request of H. D. La Motte, Oct. 2nd, A. D. 1888, at 30 minutes past 4 p. m., in Liber No. 21 of Mortgages, page 10, Records of San Mateo Co., Cal.

E. EIKERENKOTTER, Recorder.

By Claude Fox, Deputy Recorder.

Recorded at request of H. D. La Motte, in Book 84 of Mortgages, page 319, et seq., Oct. 3d, 1888, at 14 min. past 9 o'clock A. M., Records of Santa Clara Co., Cal.

Pd. \$19.00.

CHAS. P. OWEN,

County Recorder.

Filed for record at the request of H. D. La Motte, Oct. 3, A. D. 1888, at 1 o'clock p. m., and recorded in Vol. 1 of Trust Deeds, page 123, San Benito County Records.

Pd. \$19.

R. SHAW, Recorder.

By Robt. Shaw, Deputy Recorder.

Filed for record at the request of H. D. La Motte, Oct. 4, A. D. 1888, at 9 o'clock A. M., and recorded in Vol. 54 of Mortgages, page 83, Oct. 4, 1888, Santa Cruz County Records.

Paid \$19.

ED. MARTIN,

County Recorder.

Recorded at the request of H. D. La Motte, Oct. 4th, 1888, at — minutes past 2 P. M., in Record A of Trust Deeds, page 409, Monterey County, Cal.

DAVID WALLACE,

Recorder's fees, \$19.00.

County Recorder.

Recorded at request of H. D. La Motte, Oct. 6, 1888, at 30 minutes past 8 o'clock A. M., in Book "P" of Mortgages, at page 513 et seq., San Luis Obispó County Records.

(Seal.)

F. E. DARKE, Recorder.

\$18.50.

By F. E. Darke, Jr., Deputy.

Recorded at request of H. D. La Motte, at 25 min. past 10 A. M., Oct. 8, 1888, in Book W of Mortgages, page No. 1, Records of Santa Barbara County, Cal.

C. A. STUART,

Pd. \$18.50.

County Recorder.

Recorded at the request of H. D. La Motte, Oct. 9th, A. D. 1888, at 8 min. past 9 o'clock A. M., in Book 11 of Mortgages, page 56, Records of Ventura Co., Cal.

L. F. EASTIN, County Recorder.

\$16.75.

By Fred Hund, Deputy Recorder.

Recorded at request of H. D. La Motte, Oct. 10, 1888, at 48 min. past 8 a. m., in Book 179, page 74 of Mortgages, Los Angeles County Records.

Fees, \$12.00. FRANK A. GIBSON, County Recorder.
By Arthur Bray, Deputy.

Recorded at request of H. D. La Motte, Oct. 11, 1888, at 8 min. past 8 a. m., in Book 11 of Mortgages, page 129, Records San Bernardino County.

\$18.50, paid. LEGARE ALLEN, County Recorder.
By Gordon G. Ives, Deputy Recorder.

Received for Record, Oct. 12, 1888, at 9 o'clock a. m., at request of H. D. La Motte, and recorded in Book No. 43 of Mortgages, page 1, et seq., San Diego Co., Cal.

Fees.....\$23.50, pd.
Comparing, 3

\$26. 50, pd.

E. G. HAIGHT, County Recorder.
By B. F. Moore, Deputy.

Recorded at request of H. D. La Motte, Oct. 13th, 1888, at 25 min. past 9 o'clock a. m., in Book 8 of Mortgages, page 376, Records of Kern County.

Fees, \$20.00, paid.
N. R. PACKARD, County Recorder.
By F. A. Shedd, Deputy.

Recorded at request of H. D. La Motte, at 43 min.
past 7 A. M., October 15th, 1888, in Vol. "4" of Trust
Deeds, page 446, et seq., Records of Tulare county,
Cal.

Fees, \$20.00, pd.

W. F. THOMAS,

County Recorder.

Recorded at request of H. D. La Motte, at 45 minut.
past 1 P. M., Oct. 15th, 1888, in Vol. "86" of Deeds of
Fresno County Records, pp. 195, et seq.

\$20.

C. L. WAINWRIGHT,

Recorder.

Recorded at request of H. D. La Motte, October 16th,
1888, at 40 min. past 8 A. M., in Book "P" of Mort-
gages, page 106, Records of Merced County.

\$20.00 paid.

J. G. ELLIOTT,

County Recorder.

Recorded at request of H. D. La Motte, October
16th, 1888, at 25 min. past 1 P. M., in Liber 35, Deeds
of Trust, page 65, Records of Stanislaus County.

Fee, \$10.50. C. S. ABBOTT, County Recorder.

By E. E. Howard, Deputy.

Recorded at request of H. D. La Motte, October
17th, 1888, at 40 minutes past 12 o'clock M., in Book
"N" of Mortgages, page , Calaveras County Records.

\$20.00.

A. L. WYLLIE, Recorder.

By Edw. Casey, Deputy.

Recorded at request of H. D. La Motte, October 18th, 1888, at 35 min. past 10 o'clock, a. m., in Book "A," Vol. 64, page 458 of Deeds, San Joaquin County Records.

(Seal.) J. F. MOSELEY, County Recorder.
\$20.00 Paid. By G. E. Housken, Deputy.

Recorded at request of H. D. La Motte, October 18th, a. d. 1888, at 30 min. past 4, p. m., in Vol. 54 of Deeds, page 267, Records of Contra Costa County.

\$17.50 Pd. C. S. COUSINS, County Recorder.
By A. E. Dunkel, Deputy Recorder.

Recorded in the office of the County Recorder of the City and County of San Francisco, Oct. 24, 1888, at 45 min. past 9 o'clock, a. m., in Liber 1320 of Deeds, page 85.

A. T. SPOTTS, County Recorder.
By C. H. McCourtney, Deputy.

Recorded Oct. 26th, 1888, at 46 min. pass 3 p. m., in Liber 302 of Mortgages, page 1, Records of Alameda County.

F. D. HINDS,
County Recorder.

Recorded in the office of the County Recorder of the City and County of San Francisco, Oct. 27th, 1888, at 25 min. past 10 o'clock, a. m., in Liber 890 of Mtgs., page 283.

A. T. SPOTTS,
County Recorder.

STATE OF CALIFORNIA, }
City and County of San Francisco. } ss.

I, Alexander Russell, County Recorder, do hereby certify that the annexed is a whole, true and correct copy of an original record, as will appear by reference to Book 1320 of Deeds, page 85 (and 890 Mtges. 283), now in my office, and that said copy has been compared with the original, and is a correct transcript therefrom. Witness my hand and official seal this sixth day of March, A. D. 1889.

(Seal, (Signed,) ALEXANDER RUSSELL,
Recorder's Office County Recorder.
City & County Per M. Warshauer, Deputy.
of San Francisco, Cal.)

(Marked) Defendants' Exhibit before the Special Examiner, No. 91, Stephen Potter, Special Examiner.)

I hereby certify that I have compared the foregoing document with the original exhibit, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, Oct. 14, 1893.

[Endorsed]: Deed of Trust. Southern Pacific Railroad Company of the first part, Southern Pacific Company of the second part, and Central Trust Company of New York of the third part. Dated August 25, 1888. Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER,
No. 92.

(8-106.)

Department of the Interior,
Office of Commissioner of Railroads,
Washington, D. C., October 24, 1889.

Sir: Your favor of the 16th instant, containing stated enclosures of report on Form 8-008A, for the year ending June 30, 1889, for the Southern Pacific Railroad Company, is received, for which please accept thanks.

Very respectfully,
W. M. THOMPSON,
In charge of office.

To G. L. Lansing, Esq.,
Controller Southern Pacific Co.,
San Francisco, Cal.
(16032-500)

(Marked "Defendants' Exhibit before the Special Examiner, No. 92, Stephen Potter, Special Examiner."

I hereby certify that I have compared the foregoing document with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, Oct. 3, 1893.

[Endorsed]: Dec. 5, 1893. Wm. M. Van Dyke,
Clerk.

Ex. No. 92.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER.
No. 93.

Department of the Interior,
Office of Commissioner of Railroads,
Washington, D. C., October 21, 1890.

G. L. Lansing, Esq.,
Secretary and Controller,
Southern Pacific Railroad Company,
San Francisco, Cal.

Dear Sir: I have to acknowledge the receipt of your letter of the 8th instant, together with reports on Form 8-008A, for the year ending June 30, 1890, for the Central Pacific, Oregon and California, and the Southern Pacific Railroad Companies. Also report on Form 8-002B for the Central Pacific Railroad Company for the half year ending June 30, 1890.

Very truly yours,

W. M. THOMPSON,
In charge of office.

(Marked "Defendants' Exhibit before the Special Examiner, No. 93. Stephen Potter, Special Examiner.")

I hereby certify that I have compared the foregoing document with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, Oct. 3, 1893.

[Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Ex. No. 93.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER.

No. 94.

Department of the Interior,
Office of Commissioner of Railroads,
Washington, D. C., October 21, 1891.

G. L. Lansing, Esq.,
Secretary and Controller,
Southern Pacific Company,
San Francisco, Cal.

Dear Sir: I have to acknowledge the receipt of your letter of the 9th instant, inclosing reports as follows:

Central Pacific R. R. Co., for half year ending June 30, 1891, Form B.

Central Pacific R. R. Co., for year ending June 30, 1891, Form A.

Oregon & California R. R. Co., for year ending June 30, 1891, Form A.

Southern Pacific R. R. Co. of Cal., for year ending June 30, 1891, Form A.

Very truly yours,

W. M. THOMPSON, Bookkeeper.

(Marked "Defendants' Exhibit before the Special Examiner, No. 94, Stephen Potter, Special Examiner.")

I hereby certify that I have compared the foregoing document with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER, Special Examiner.

San Francisco, Oct. 3d, 1893.

[Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Ex. No. 94.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER,
No. 95.

Department of the Interior,
Office of Commissioner of Railroads,

Washington, D. C., September 28, 1892.

G. L. Lansing, Esq.,
Secretary and Controller,
Southern Pacific Company,
San Francisco, Cal.

Dear Sir: I have to acknowledge the receipt of your letter of the 19th inst., transmitting reports on Form 8-008A for the year ending June 30, 1892, for the Southern Pacific Railroad Company of California, and the Oregon and California Railroad Company.

Very truly yours,

W. M. THOMPSON,
Bookkeeper.

(Marked "Defendants' Exhibit before the Special Examiner, No. 95, Stephen Potter, Special Examiner.)

I hereby certify that I have compared the foregoing document with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, Oct. 3, 1893.

[Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke,
Clerk.

Ex. No. 95.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER.
No. 96.

Department of the Interior,
Office of Commissioner of Railroads,

Washington, D. C., September 16, 1893.

G. L. Lansing, Esq.,
Secretary and Controller
Southern Pacific Company,
San Francisco, Cal.

Sir: The annual report of the Southern Pacific Railroad Company of California, on our form 8-008A, for the year ending June 30, 1893, has been received.

Very respectfully,

F. E. STORM,
Bookkeeper.

(Marked "Defendants' Exhibit before the Special Examiner, No. 96, Stephen Potter, Special Examiner.")

I hereby certify that I have compared the foregoing document with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, Oct. 3, 1893.

[Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Ex. No. 96.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER
No. 97.

Deed, No. 3826.

To all to whom these presents shall come:

The Southern Pacific Railroad Company, a corporation duly incorporated and organized under the laws of the State of California, and D. O. Mills and Gerrit L. Lansing, Trustees of all the lands of the said Southern Pacific Railroad Company, lying in the State of California, which remained unsold on the first day of April, A. D. 1875, send greeting:

WHEREAS, on the first day of April, A. D. 1875, the said Southern Pacific Railroad Company conveyed all its lands lying in the State of California, then unsold, of which the lands hereinafter described were and are a part, to D. O. Mills and Lloyd Tevis, to hold in trust as security for the payment of forty-eight thousand bonds, forty-four thousand thereof for the sum of one thousand dollars each, and four thousand thereof for the sum of five hundred dollars each, issued, and to be issued by said Southern Pacific Railroad Company in seven series, to be designated by the letters of the alphabet, commencing with the letter A, and followed by the succeeding letters in regular order to, and including the letter G; Series A to consist of thirteen thousand bonds for one thousand dollars each, numbered from one to thirteen thousand, both inclusive, and four thousand bonds for five hundred dollars each, numbered from thirteen thousand and one to seventeen thousand, both inclusive; Series B to F, both inclusive, to consist of five thousand bonds each, for one thousand dollars each, numbered from seventeen

Ex. No. 97.

thousand and one to forty-two thousand, both inclusive; Series G to consist of six thousand bonds for one thousand dollars each, numbered from forty-two thousand and one to forty-eight thousand, both inclusive; All of said bonds payable thirty years after date, with interest at the rate of six per centum per annum, payable semi-annually, said series A to bear date April first, eighteen hundred and seventy-five, and the said several succeeding series to bear such date respectively as the Board of Directors of said Southern Pacific Railroad Company may direct; all of said bonds aggregating the sum of forty-six millions of dollars;

AND WHEREAS, Said Deed of Trust, among other matters, provided that the said Southern Pacific Railroad Company should have the sole and exclusive control and management of said lands, with full power to make sales of the same upon such terms and condition as might, from time to time be agreed upon between the said railroad company and the said Trustees; and that when such sales have been made, and the purchase money fully paid, the said company and the said Trustees should unite in a conveyance in fee simple of the lands so sold to the purchaser or purchasers thereof, which conveyance should absolutely and forever release the lands so conveyed from any and all lien or incumbrance for or on account of said bonds, or any other debt, or obligation of the said Railroad Company.

AND WHEREAS, On the 24th day of March, 1883, Lloyd Tevis, one of the Trustees, did resign his trust under said conveyance of the first of April, 1875;

and whereas, on the 3rd day of April, 1883, the said D. O. Mills, the remaining Trustee under said conveyance, did, pursuant to the terms of his trust, nominate Gerrit L. Lansing, of the City of San Francisco and State of California, to fill the vacancy caused by the resignation of said Lloyd Tevis.

AND WHEREAS, On the 17th day of April, 1883, the Board of Directors of the said Southern Pacific Railroad Company, pursuant to the terms of said trust, did ratify and approve said nomination, and did appoint said Gerrit L. Lansing to fill said vacancy; and whereas, on the 18th day of April, 1883, the said Gerrit L. Lansing did formally accept the position of Trustee under said Deed of Trust;

AND WHEREAS, Said Deed of Trust further provided that for the sake of convenience in making said conveyances, the said Trustees should have power to act by attorney, duly nominated and appointed by them jointly by letter of attorney, which should be duly acknowledged and recorded in each and all the counties in which said lands, or any part thereof, are situated, and that all deeds made in their names by such attorney should have the same force and effect as if made by them in person.

AND WHEREAS, On the 21st day of April, 1883, said Trustees, D. O. Mills and Gerrit L. Lansing, acting under the power so vested in them, did nominate, constitute and appoint, by letter of attorney, duly acknowledged and recorded as aforesaid, Jerome Madden, of the City and County of San Francisco, and State of California, their true and lawful attorney, in their names, place and stead, to make, execute and deliver all conveyances required of them, as aforesaid;

AND WHEREAS, The said Railroad Company has sold the lands hereinafter described, pursuant to the foregoing conditions, to James B. Randol of the County of Santa Clara, in the State of California, for the sum of twenty-four hundred (\$2400 00-100) dollars, which sum has been by him fully paid to said D. O. Mills and Gerrit L. Lansing, Trustees, as aforesaid;

Now THEREFORE, In consideration of the premises, and the said sum of twenty-four hundred (\$2400 00-100) dollars, the receipt whereof is hereby acknowledged, the said Southern Pacific Railroad Company, and the said D. O. Mills and Gerrit L. Lansing, Trustees, as aforesaid, do grant, bargain, sell and convey to the said James B. Randol, and to his heirs and assigns, the following described tracts of land situate, lying and being in the County of Los Angeles, and State of California, to-wit: All of Section Twenty-five (25) and the south half ($S\frac{1}{2}$) of Section No. Thirty-five (35) in Township Six (6), north of Range Twelve (12) West, San Bernardino Base and Meridian, containing nine hundred and sixty (960) acres, according to the United States surveys, together with all the privileges and appurtenances thereunto appertaining and belonging; excepting and reserving, however, for railroad purposes a strip of land one hundred feet wide, lying equally on each side of the track of the railroad of said company, or any branch railroad now or hereafter constructed on said lands, and the right to use all water needed for the operating and repairing of said railroad; and subject also to the reservation and condition that the said purchaser, his heirs and assigns, shall erect and main-

tain good and sufficient fences on both sides of said strip or strips of land; and also reserving all claim of the United States to the same as mineral land.

To HAVE AND TO HOLD the aforesaid premises, to the said James B. Randol, his heirs and assigns, to his and their use and behoof forever.

IN TESTIMONY WHEREOF, The said Southern Pacific Railroad Company has caused these presents to be signed by its Vice-President and Secretary and sealed with its corporate seal; and the said D. O. Mills and Gerrit L. Lansing, Trustees, by their said attorney, Jerome Madden, have subscribed their names and affixed their seals, this sixt^h (6th) day of October, A. D. 1884.

(Seal)

CHAS. F. CROCKER,

Vice-Pres. S. P. R. R. Co.

J. L. WILLCUTT,

Sec. S. P. R. R. Co.

(Seal.)

D. O. MILLS,

(Seal.)

GERRIT L. LANSING,

Trustees.

By Jerome Madden,

Their Joint Attorney-in-Fact.

STATE OF CALIFORNIA,
City and County of San Francisco. } ss.

On this sixth (6th) day of October, in the year one thousand eight hundred and eighty-four (1884), before me, Charles J. Torbert, a Notary Public in and for the City and County of San Francisco, State of California, personally appeared Charles F. Crocker, known to me

to be the Vice-President, and J. L. Willcutt, known to me to be the Secretary of the corporation that executed the within instrument; and each of them acknowledged to me that such corporation executed the same; also, on this the day aforesaid, before me, the Notary Public aforesaid, personally appeared Jerome Madden, known to me to be the person whose name is subscribed to the within instrument, as the Attorney-in-fact of D. O. Mills and Gerrit L. Lansing, and acknowledged to me that he subscribed the names of the said D. O. Mills and Gerrit L. Lansing thereto as principals, and his own name as Attorney-in-fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office, in the City and County of San Francisco, State of California, on the day and year above written.

(Seal.)

CHARLES J. TORBERT,

Notary Public in and for the City and County
of San Francisco and State of California.

[Endorsed]: Due. Deed No. 3826. Southern Pacific Railroad Co. D. O. Mills and Gerrit L. Lansing, Trustees, to James B. Randol. Deed. Dated October 6th, 1884.

Recorded at request of Wells, Fargo & Co., Oct. 11th, 1884, at 35 min. past 3 p. m. in Book No. 129 of Deeds, page 252, Records of Los Angeles County. Chas. E. Miles, County Recorder. By B. A. Yorba. \$3.70 due.

(Marked Defendants' Exhibit before the Special Examiner, No. 97. Stephen Potter, Special Examiner.)

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, Oct. 4th, 1893.

[Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Exhibits 98 to 102, inclusive, withdrawn.

(See pp. 682, 683 and 684, record.)

Ex. 98 to 102.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER.
No. 103.

WHEREAS, I, George Loomis, of the County of San Mateo, State of California, have heretofore entered into certain contracts with the Southern Pacific Railroad Company of California, a corporation organized and existing under and by virtue of the laws of the State of California, for the purchase of the following described lands:

All of Section 15, T. 3 N., R. 16 W., S. B. M., with the exception of the N. E. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$, and the N. W. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$.

The S. $\frac{1}{2}$ of the N. E. $\frac{1}{4}$ and fraction S. $\frac{1}{2}$ of the N. W. $\frac{1}{4}$ of Section 7, T. 3 N., R. 15 W., S. B. M.

The S. E. $\frac{1}{4}$ of Sec. 7, T. 3 N., R. 15 W., S. B. M.

The fractional S. W. $\frac{1}{4}$ of Section 7, T. 3 N., R. 15 W., S. B. M.

That certain tract which has never been surveyed by the United States Government surveyors, but is

herein described and numbered as if the same had been surveyed and the survey approved and filed according to law, to-wit: The N. E. $\frac{1}{4}$ of Section 7, T. 3 N., R. 16 W., S. B. M.

That certain tract which has never been surveyed by the United States Government surveyors, but is herein described and numbered as if the same had been surveyed and the survey approved and filed according to law, to-wit: The N. W. $\frac{1}{4}$ of Section 7, T. 3 N., R. 16 W., S. B. M.

That certain tract which has never been surveyed by the United States Government surveyors, but is herein described and numbered as if the same had been surveyed, and the survey approved and filed according to law, to-wit: The S. E. $\frac{1}{4}$ of Section 7, T. 3 N., R. 16 W., S. B. M.

That certain tract of land which has never been surveyed by the United States Government Surveyors but is herein described and numbered as if the same had been surveyed and the survey approved and filed according to law, to-wit: The SW $\frac{1}{4}$ of Section 7, T. 3 N., R. 16 W., S. B. M.

The W $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Section 9, T. 3 N., R. 16 W., S. B. M.

Lots 1, 2, 3 and 4 of Section 17, T. 3 N., R. 16 W., S. B. M.

The NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 21, T. 3 N., R. 16 W., S. B. M.

The fractional NE $\frac{1}{4}$ of Section 1, T. 3 N., R. 17 W., S. B. M.

The fractional NW $\frac{1}{4}$ of Section 1, T. 3 N., R. 17 W., S. B. M.

1588 SOUTHERN PACIFIC RAILROAD CO., ET AL.,

The SE $\frac{1}{4}$ of Section 1, T. 3 N., R. 17 W., S. B. M.

The SW $\frac{1}{4}$ of Section 1, T. 3 N., R. 17 W., S. B. M.

I do hereby declare that the purchase of all of the said lands has been made by me for the sole use and benefit of the Pacific Coast Oil Company, a corporation organized and existing under and by virtue of the laws of the State of California, and that the said contracts of purchase are held by me in trust for said corporation, and that I will at any time and upon its demand transfer to it all my right, title and interest in and to said contracts upon the said Pacific Coast Oil Company's assuming all the conditions and obligations therein imposed upon me as the purchaser from said Southern Pacific Railroad Company.

(Dated) San Francisco, Dec. 8th, 1891.

In presence of

D. G. SCOFIELD,

GEO. LOOMIS.

[Endorsed]: Declaration of Trust. George Loomis to Pacific Coast Oil Co. December 8th, 1891.

(Marked Defendants' Exhibit before the Special Examiner, No. 103, Stephen Potter, Special Examiner.

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,

Special Examiner.

San Francisco, Oct. 4th, 1893.

[Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER.
No. 104.

G. 291. (2-29-88-2,000.

Southern Pacific Railroad Company,
No. 10,077. Land Department.

This Agreement, made at San Francisco, California, this twenty-fifth (25th) day of April, A. D. 1889, between the Southern Pacific Railroad Company, party of the first part, and George Loomis, of the County of San Mateo, State of California, party of the second part;

WITNESSETH, That the party of the first part, in consideration of the covenants and agreements of the party of the second part hereinafter contained, agrees to sell to the party of the second part the following tracts of lands, situated in the County of Los Angeles, State of California, and known and designated on the public surveys of the United States as the northeast quarter of northeast quarter (NE $\frac{1}{4}$ of NE $\frac{1}{4}$), south half of northeast quarter (S $\frac{1}{2}$ of NE $\frac{1}{4}$), northwest quarter of northwest quarter (NW $\frac{1}{4}$ of NW $\frac{1}{4}$), south half of northwest quarter (S $\frac{1}{2}$ of NW $\frac{1}{4}$), and south half (S $\frac{1}{2}$) of Section Fifteen (15), Township Three (3) North, Range Sixteen (16) West, San Bernardino Base and Meridian, containing five hundred and sixty (560 00) 00-100 acres, for the sum of twenty-eight hundred (\$2,800.00) 00-100 dollars Gold Coin of the United States.

And the party of the second part, in consideration of the premises, agrees to buy the land hereinbefore described, and to pay to the party of the

first part the said sum of twenty-eight hundred (\$2800.00) 00-100 dollars as follows, to wit: Five hundred and sixty (\$560.00) 00-100 dollars, and also \$156.80, one year's interest in advance on the remainder, in United States Gold Coin of the present standard of value, on the execution of this contract, (which two last mentioned sums have this day been fully paid), and the remainder, to wit: the sum of twenty-two hundred and forty (\$2240.00) 00-100 dollars, with interest thereon, annually in advance, at the rate of seven per cent. per annum, both in United States Gold Coin, of the present standard of value, at its office in the City and County of San Francisco, on or before the twenty-fifth (25th) day of April, 1894; and also, to pay all taxes and assessments that may at any time be levied or imposed upon said premises, or any part thereof, and if the party of the second part shall fail to pay such taxes or assessments, or any part thereof, at any time, when the same shall become due, then the said party of the first part may pay the same; and all sums so paid by the party of the first part shall be added to and become part of the unpaid remainder, and shall bear interest at the same rate and be paid in the same manner and at the same time and place hereinbefore provided for the payment of said remainder and the interest thereon.

It is further agreed, that upon the punctual payment of said purchase money, interest, taxes and assessments, and the strict and faithful performance by the party of the second part, his legal representatives or assigns, of all the agreements herein contained, the party of the

first part will, after the receipt of a patent therefor from the United States, upon demand and the surrender of this instrument, execute and deliver to the party of the second part, his heirs and assigns, a grant, bargain and sale deed of said premises, reserving all claim of the United States to the same as mineral land.

It is further agreed, that until the full payment of said purchase money, interest, taxes and assessments, no strip or waste shall be made on said premises and that no wood or growing trees shall be cut thereon, except for necessary fuel for the family of the legal occupant under this contract, and for the erection of buildings or fences on said land, without the previous written consent of the party of the first part.

It is further agreed, that the party of the second part may at once enter upon, take and hold possession of said premises; provided, however, that if the party of the second part shall fail to make any of said payments of remainder, or interest, taxes or assessments, as herein provided, or shall fail to comply strictly with any of the stipulations of this contract, then this right shall cease, and the party of the first part, its successors or assigns, may, without notice, enter upon, take and hold possession of the said premises, with all the improvements thereon.

It is further agreed between the parties hereto, that the party of the first part claims all the tracts hereinbefore described, as part of a grant of lands to it by the Congress of the United States; that patent has not yet issued to it for said tracts; that it will use

ordinary diligence to procure patents for them; that, as in consequence of circumstances beyond its control, it sometimes fails to obtain patent for lands that seem to be legally a portion of its said grant, therefore, nothing in this instrument shall be considered a guarantee or assurance that patent or title will be procured; that in case it be finally determined that patent shall not issue to said party of the first part for all or any of the tracts herein described, it will, upon demand, repay (without interest) to the party of the second part, all moneys that may have been paid to it by him on account of any such tracts as it shall fail to procure patent for, the amount of repayment to be calculated at the rate and price per acre, fixed at this date, for such tracts by said party of the first part, as per schedule on page 3 hereof; that said lands being unpatented, the party of the first part does not guarantee the possession of them to the party of the second part, and will not be responsible to him for damages or costs in case of his failure to obtain and keep such possession.

It is further agreed, that if the party of the first part shall obtain patent for part of the lands herein described, and shall fail to obtain patent for the remainder of them, this contract shall in all its provisions be and remain in full force and virtue as to the tracts patented, and shall, except as to repayments herein provided for, be null and void as regards those tracts, for which it shall be finally determined that patents cannot be obtained.

It is further agreed, that the party of the second part will never deny that the tracts herein described,

or any part of them, are a part of said grant and will do no act to hinder, delay or impede the obtaining of patent for them by the party of the first part; and that he will not obtain or hold possession of all or any of them adversely to said party of the first part.

It is further agreed, that this contract shall not be assignable, except by endorsement, and with the written consent of the party of the first part, and the written promise of the assignee to perform all the undertakings and promises of the party of the second part as above set forth.

It is further agreed, that the party of the second part shall pay \$3.00 for expenses of the acknowledgments to the deed that shall be issued on this contract.

IN TESTIMONY WHEREOF, the party of the first part has caused these presents to be signed in duplicate by its Secretary, and Land Agent, and the party of the second part has signed his name hereto.

JEROME MADDEN,
Land Agent S. P. R. R. Co.

J. L. WILLCUTT,
Secretary S. P. R. R. Co.

GEORGE LOOMIS, (Seal.)
(Seal.)

Schedule of prices at which the lands described in this contract have been sold this twenty-fifth (25th) day of April, 1889.

FRACTION.	Sec.	Tp.	Range.	B. & M.	No. of Acres.	Rate per Acre.	Amount.
NE $\frac{1}{4}$ of NE $\frac{1}{4}$,						\$	\$
S $\frac{1}{2}$ of NE $\frac{1}{4}$,							
NW $\frac{1}{4}$ of NW							
$\frac{1}{4}$, S $\frac{1}{2}$ of NW							
$\frac{1}{4}$ and S $\frac{1}{2}$	15	3 N	16W	S B	560 00	5 00	2800 00

JEROME MADDEN,
Land Agent, S. P. R. R. Co.

[Endorsed]: Unpatented lands, No. 10,077. Contract for a Deed. Southern Pacific Railroad Company to George Loomis. Dated April 25th, 1889. Interest \$156.80, due on the 25th day of April of each year. Remainder of principal, \$2,240.00, due on the 25th day of April, 1894.

(Marked): Defendants' Exhibit before the Special Examiner, No. 104, Stephen Potter, Special Examiner.

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,
Special Examiner.

San Francisco, Oct. 4th, 1893.

[Endorsed]: Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER.
No. 105.

G. 291 (2-29-88-2,000)

QUITCLAIM DEED No. 9416.

To all to whom these presents shall come:

The Southern Pacific Railroad Company, a corporation duly incorporated and organized under the laws of the State of California, and D. O. Mills and Gerrit L. Lansing, Trustees, of all the lands of the said Southern Pacific Railroad Company lying in the State of California, which remained unsold on the first day of April, A. D. 1875, send greeting:

WHEREAS, on the first day of April, A. D. 1875, the said Southern Pacific Railroad Company, conveyed all its lands lying in the State of California, then unsold, of which the lands hereinafter described were and are a part, to D. O. Mills and Lloyd Tevis, to hold in trust as security for the payment of forty-eight thousand bonds, forty-four thousand thereof for the sum of one thousand dollars each, and four thousand thereof for the sum of five hundred dollars each, issued and to be issued, by said Southern Pacific Railroad Company, in seven series, to be designated by the letters of the alphabet, commencing with the letter A and followed by the succeeding letters in regular order to and including the letter G; Series A to consist of thirteen thousand bonds for one thousand dollars each, numbered from one to thirteen thousand, both inclusive, and four thousand bonds for five hundred dollars each, numbered from thirteen thousand and one to seventeen thousand, both inclusive; Series B to F, both inclusive, to consist of five thousand bonds each for

one thousand dollars each, numbered from seventeen thousand and one to forty-two thousand, both inclusive; Series G to consist of six thousand bonds for one thousand dollars each, numbered from forty-two thousand and one to forty-eight thousand, both inclusive; all of said bonds payable thirty years after date, with interest at the rate of six per centum per annum, payable semi-annually, said Series A to bear date April first, eighteen hundred and seventy-five, and the said several succeeding series to bear such dates respectively as the Board of Directors of said Southern Pacific Railroad Company may direct; all of said bonds aggregating the sum of forty-six millions of dollars.

AND WHEREAS, Said deed of trust, among other matters, provided that the said Southern Pacific Railroad Company should have the sole and exclusive control and management of said lands, with full power to make sales of the same upon such terms and conditions as might from time to time be agreed upon between the said Railroad Company and the said Trustees; and that when such sales had been made and the purchase money fully paid, the said company and the said trustees should unite in a conveyance in fee simple of the lands so sold to the purchaser or purchasers thereof, which conveyance should absolutely and forever release the lands so conveyed from any and all lien or incumbrance for or on account of said bonds, or any other debt or obligation of the said railroad company.

AND WHEREAS, On the 24th day of March, 1883, Lloyd Tevis, one of the trustees, did resign his trust

under said conveyance of the first of April, 1875; and whereas, on the 3rd day of April, 1883, the said D. O. Mills, the remaining trustee under said conveyance, did, pursuant to the terms of his trust, nominate Gerrit L. Lansing, of the City of San Francisco, and State of California, to fill the vacancy caused by the resignation of said Lloyd Tevis.

AND WHEREAS, On the 17th day of April, 1883, the Board of Directors of the said Southern Pacific Railroad Company, pursuant to the terms of said trust, did ratify and approve said nomination, and did appoint said Gerrit L. Lansing to fill said vacancy; and whereas, on the 18th day of April, 1883, the said Gerrit L. Lansing did formally accept the position of trustee under said deed of trust.

AND WHEREAS, Said deed of trust further provided, that for the sake of convenience in making said conveyances, the said trustees should have power to act by attorney, duly nominated and appointed by them jointly by letter of attorney, which should be duly acknowledged and recorded in each and all the counties in which said land, or any part thereof, are situated, and that all deeds made in their names by such attorney should have the same force and effect as if made by them in person.

AND WHEREAS, On the 21st day of April, 1883, said Trustees, D. O. Mills and Gerrit L. Lansing, acting under the power so vested in them, did nominate, constitute and appoint by letter of attorney, duly acknowledged and recorded as aforesaid, Jerome Madden, of the City and County of San Francisco, State of California, their true and lawful attorney, in their

names, place and stead, to make, execute and deliver all conveyance required of them as aforesaid;

AND WHEREAS, the said railroad company has sold the lands herein after described, pursuant to the foregoing conditions, to the Pacific Coast Oil Co. of the City and County of San Francisco, and State of California, for the sum of seven hundred and eighty-four (\$784.55-100) 55-100 dollars, which sum has been by it fully paid to the said D. O. Mills and Gerrit L. Lansing, Trustees, as aforesaid.

NOW THEREFORE, in consideration of the premises, and the said sum of seven hundred and eighty-four (\$784.55-100) 55-100 dollars, the receipt whereof is hereby acknowledged, the said Southern Pacific Railroad Company and the said D. O. Mills and Gerrit L. Lansing, Trustees as aforesaid, do remise, release and quitclaim to the said Pacific Coast Oil Co., E. B. R. N. P., and to its successors or assigns, all the right, title and interest which they now have, or may hereafter acquire, from the Government of the United States, of in and to the following described tracts of land situate, lying and being in the County of Los Angeles and State of California, to wit: The northeast quarter (NE $\frac{1}{4}$), northeast quarter of northwest quarter (NE $\frac{1}{4}$ of NW $\frac{1}{4}$), and lots one, two, three, and four (1, 2, 3, and 4) of Section No. Nineteen (19), in Township (3) North, of Range Fifteen (15) West, San Bernardino Base and Meridian, containing Three hundred and Thirteen (313 82-100) 82-100 acres, according to the United States surveys, together with all the privileges and appurtenances thereto appertaining and belonging; reserving all

claim of the United States to the same as mineral land.

To HAVE AND TO HOLD the aforesaid premises, to the said Pacific Coast Oil Co., E. B. R. N. P., its successors or assigns, to its and their use and behoof forever.

IN TESTIMONY WHEREOF, The said Southern Pacific Railroad Company has caused these presents to be signed by its President and Secretary, and sealed with its corporate seal, and the said D. O. Mills and Gerrit L. Lansing, Trustees, by their said attorney, Jerome Madden, have subscribed their names and affixed their seals, this fifth (5th) day of March, A. D. 1888.

(Seal.)

CHARLES CROCKER,
Pres. S. P. R. R. Co.

J. L. WILLCUTT,
Sec. S. P. R. R. Co.

D. O. MILLS. (Seal)

GERRIT L. LANSING, (Seal) Trustees.
By Jerome Madden,
Their Joint Attorney-in-Fact.

STATE OF CALIFORNIA, } ss.
City and County of San Francisco. }

On this fifth (5th) day of March, in the year one thousand eight hundred and eighty-eight, before me, E. B. Ryan, a Notary Public in and for the City and County of San Francisco, State of California, personally appeared Charles Crocker, known to me to be the

President, and J. L. Willeutt, known to me to be the Secretary of the corporation that executed the within instrument, and each of them acknowledged to me that such corporation executed the same; also, on this, the day aforesaid, before me, the Notary Public aforesaid, personally appeared Jerome Madden, known to me to be the person whose name is subscribed to the within instrument, as the attorney-in-fact of D. O. Mills and Gerrit L. Lansing, and acknowledged to me that he subscribed the names of the said D. O. Mills and Gerrit L. Lansing thereto as principals, and his own name as attorney-in-fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the City and County of San Francisco, State of California, on the day and year above written.

(Seal)

E. B. RYAN,

Notary Public in and for the City and County
of San Francisco, State of California.

[Endorsed]: 324 Pine, S. F. Quitclaim Deed
No. 9416. Southern Pacific Railroad Co., D. O. Mills
and Gerrit L. Lansing, Trustees, to Pacific Coast Oil
Co. Quit claim Deed. Dated March 5th, 1888.

Recorded at request of Pillsbury and Blanding,
Apr. 19, 1888, 49 min. past 3 p. m., in Book 418, page
282 of Deeds, Los Angeles County Records.

FRANK GIBSON, County Recorder.

By Arthur Bray, Deputy.

Fees, \$2.50—Folios 14.

(Marked Defendants' Exhibit before the Special Examiner, No. 105, Stephen Potter, Special Examiner.)

I hereby certify that I have compared the foregoing instrument with the original, and find it to be a full, true and correct copy thereof.

STEPHEN POTTER,

Special Examiner.

San Francisco, Oct. 4th, 1893.

[Endorsed]: Filed Dec. 5, 1893. W. M. Van Dyke,
Clerk.

DEFENDANTS' EXHIBIT BEFORE THE SPECIAL EXAMINER.
No. 106.

G. 291. (2-29-88-2000.)

Southern Pacific Railroad Company,
No. 10,320. Land Department.

This Agreement, made at San Francisco, California, this eighth (8th) day of May, A. D. 1890, between the Southern Pacific Railroad Company, party of the first part, and George Loomis, of the County of San Mateo, State of California, party of the second part.

WITNESSETH: That the party of the first part, in consideration of the covenants and agreements of the party of the second part, hereinafter contained, agrees to sell to the party of the second part, the following tracts of land, situated in the County of Los Angeles, State of California, and known and designated on the public surveys of the United States as the south half of northeast quarter (S $\frac{1}{2}$ of NE $\frac{1}{4}$) and fractional south half of northwest quarter (Fract. S $\frac{1}{2}$ of NW $\frac{1}{4}$)

of Section Seven (7), Township Three (3) North, Range Fifteen (15) West, San Bernardino Base and Meridian, containing one hundred and fifty-six (156.17) 17-100 acres, for the sum of seven hundred and eighty (\$780.85) 85-100 dollars gold coin of the United States.

And the party of the second part, in consideration of the premises, agrees to buy the land hereinbefore described, and to pay to the party of the first part the said sum of seven hundred and eighty (\$780.85) 85-100 dollars, as follows, to-wit: one hundred and fifty-six (\$156.17) 17-100 dollars, and also \$43.73, one year's interest in advance on the remainder, in United States Gold Coin of the present standard of value, on the execution of this contract, (which two last mentioned sums have this day been fully paid) and the remainder, to-wit: the sum of six hundred and twenty-four (\$624.68) 68-100 dollars, with interest thereon, annually in advance, at the rate of seven per cent. per annum, both in United States Gold Coin, of the present standard of value, at its office in the City and County of San Francisco, on or before the eighth (8th) day of May, 1895; and, also, to pay all taxes and assessments that may at any time be levied or imposed upon said premises, or any part thereof; and if the party of the second part shall fail to pay such taxes or assessments, or any part thereof, at any time when the same shall become due, then the said party of the first part may pay the same; and all sums so paid by the party of the first part shall be added to and become part of the unpaid remainder, and shall bear interest at the same rate, and be paid

in the same manner, and at the same time and place hereinbefore provided for the payment of said remainder and the interest thereon.

It is further agreed, that upon the punctual payment of said purchase money, interest, taxes and assessments, and the strict and faithful performance by the party of the second part, his legal representatives or assigns, of all the agreements herein contained, the party of the first part will, after the receipt of a patent therefor, from the United States upon demand and the surrender of this instrument, execute and deliver to the party of the second part, his heirs and assigns, a grant, bargain and sale deed of said premises, reserving all claim of the United States to the same as mineral land.

It is further agreed, that until the full payment of said purchase money, interest, taxes and assessments, no strip or waste shall be made on said premises, and that no wood or growing trees shall be cut thereon, except for necessary fuel for the family of the legal occupant under this contract, and for the erection of buildings or fences on said land, without the previous written consent of the party of the first part.

It is further agreed, that the party of the second part may at once enter upon, take and hold possession of said premises; provided, however, that if the party of the second part shall fail to make any of said payments of remainder or interest, taxes, or assessments, as herein provided, or shall fail to comply strictly with any of the stipulations of this contract, then this right shall cease, and the party of the first part, its successors or assigns, may without notice enter upon, take